
(1960) 11 CAL CK 0002
In the Calcutta High Court
Case No : O.S. Matter No. 109 of 1960

Naib Transport (Private) Ltd.

APPELLANT

Vs

Regional Transport Authority

RESPONDENT

Date of Decision : 17-11-1960

Acts Referred:

Constitution of India, 1950 — Article 14, 160, 166, 166(1), 166(2)
General Clauses Act, 1897 — Section 6
Government of India Act, 1935 — Section 40, 40(1), 40(2)
Motor Vehicles Act, 1939 — Section 58A, 68C, 7
Preventive Detention Act, 1950 — Section 3(1)
Preventive Detention Act, 1960 — Section 11(1), 13

Citation : 65 CWN 1179 : (1962) 1 ILR (Cal) 183

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—The facts in this case are shortly as follows: The Petitioner No. 1 is the owner of seven buses and the Petitioner No. 2 is the owner of a bus. These buses used to ply on route No. 12C in Calcutta, which runs from Howrah Station to Barisa. Until the year 1954, the said buses were running on route No. 33 which runs from Paikpara to Chetla. Sometime in 1954, an agreement was entered into between the Petitioners and the Regional Transport Authority Calcutta, whereby the Petitioners and certain other permit holders withdrew their buses from route No. 33 to No. 12C and they were doing so under permits granted from time to time. The Indian Motor Vehicles Act (Act IV of 1939) (hereinafter referred to as the said "Act") was amended by the Motor Vehicles (Amendment) Act, 1956 (Act 100 of 1956), which received the assent of the President on December 30, 1950. Under the said Amendment Act, a new chapter, being Chapter IVA was inserted in the said Act, containing special provisions relating to nationalisation of transport and the creation of a State Transport Undertaking. In West Bengal, the Directorate of Transportation, Government of West Bengal, is the State Transport Undertaking. On or about August 17, 1957, the Directorate of Transportation, Government of West Bengal, the Respondent No. 6 to this application, prepared a

scheme u/s 68C of the said Act, for the purpose of taking over certain routes in Calcutta, including No. 120, to be operated by the State Transport Undertaking, to the complete exclusion of other persons. The said scheme was published in the Calcutta Gazette, dated August 22, 1957. Purporting to act under the said scheme, the Respondent No. 6 passed an order taking over route No. 12C in Calcutta, to the exclusion of all passenger services on and from April 1, 1960. On September 25, 1957, several objections to the said scheme were heard by Shri R. Gupta, an officer of the Transport Department of the Government of West Bengal, being the Transport Commissioner. On September 26, 1957, the objections were rejected and the scheme was approved by the said Shri R. Gupta. On January 18, 1960, the Petitioner applied for renewal of permits in respect of route No. 12C, with effect from April 1, 1960. On March 18, 1960, the Petitioners made an application to this Court under Article 226 of the Constitution, challenging the said scheme and the approval thereof by Shri R. Gupta, inter alia on the ground that Shri R. Gupta was himself an officer of the State Transport undertaking and as such, was a biased person. A rule was issued on March 18, 1960. The matter was heard by G.K. Mitter for J., and by an order dated March 31, 1960, the rule was made absolute and a writ in the nature of certiorari was issued, quashing the order of the Respondent No. 6, regarding the implementation of the said scheme dated August 17, 1957 and/or September 26, 1957, in relation to route No. 12C in Calcutta. Other appropriate writs were also issued preventing the said Respondent from taking over route No. 120 in terms of the purported scheme. At the hearing of the application it was mentioned that the Respondent No. 6 had obtained an order dated August 14, 1956 u/s 58A of the said Act, directing the Regional Transport Authority, Calcutta, to grant stage carriage permits in respect of 700 stage carriages for operation of passenger services within the Calcutta region, and that on September 11, 1956 the Regional Transport Authority, Calcutta, issued the said permits pursuant to the said order. The learned Judge held that there were not sufficient materials before him to deal with this aspect of the situation and, therefore, he did not deal with it. The result has been that the Respondent No. 6 is running stage carriages, to the exclusion of other persons in route No. 120, on the strength of the permits issued by the Regional Transport Authority as aforesaid, while the application by the Petitioners for renewal of their permits have been kept pending and no order passed thereon. The Petitioners have now made this application and this rule was issued on May 13, 1960, asking the Respondent No. 6 to show cause why a writ in the nature of mandamus should not be issued, calling upon the Directorate of Transportation, Government of West Bengal, to forthwith recall or withdraw their buses from route No. 120 in Calcutta and/or forbear from running its buses in the said route in any manner whatsoever, and why such further, or other orders should not be made and/or directions given as to this Court may deem fit and proper. Section 58A of the said Act was introduced by the Motor Vehicles (West Bengal Amendment) Act, 1951, (West Bengal Act SIX of 1951) and runs as follows:

58A. Grant of permit to local authority.-Notwithstanding anything hereinbefore contained, the State Government may by order direct any Regional Transport Authority or the State Transport Authority to grant stage carriage permits to the State Government, or any local authority specified in the order.

2. Mr. Meyer appearing on behalf of the Petitioners, has taken" three points, which are as follows:

The first point taken is that as a matter of fact, no order has ever been made u/s 58A of the said Act, on August 14, 1956, or on any other date, and therefore the permits granted thereunder on September 11, 1956, are invalid. If no order had in fact been made u/s 58A of the said Act, then permits for stage carriages could only be issued under Chapter IV of the said Act, after complying with the procedure laid down in the said Act. It is admitted that the procedure in Chapter IV had not been followed in this case. In other words, the validity of the permits granted to the Respondent No. 6 on September 11, 19915, depends Upon the validity of the purported order dated August 14, 1956, u/s 58A of the ; said Act. The second point taken is that upon the coming into: operation of Chapter IVA of the said Act, on December 30, 1956, Section 58A of the said Act must be taken to have been impliedly repealed. It is argued that different States in India promulgated different local laws for the purpose of nationalisation of transport services, and it was with the intention of nationalisation that Section 58A was introduced in the said Act. In order to make the law relating "to nationalisation of transport services uniform throughout India, Parliament enacted the Motor Vehicles (Amendment) Act of 1956 (Act 100 of 1956) which now supersedes all local laws and is the only provision which can be resorted to for the purpose of nationlisation of transport services. It is argued that upon Chapter IVA coming into operation, Section 58A of the said Act, which was a local amendment, must be taken to have been impliedly repealed and therefore, the permits granted u/s 58A ceased to be operative. The third point taken is that if Section 58A is to be considered as still operative, then it is ultra vires the Constitution, being violative of Article 14 of the Constitution. It is argued that Section 58A and the provisions of Chapter IVA cannot simultaneously be in operation, as in that event there would be discrimination between different transport undertakings.

3. In my opinion, the second and third points can be disposed of at once. As will appear from the facts set out above, the permits granted u/s 58A of the said Act, were granted at a point of time when the Central Act 100 of 1956 had not yet come into operation. In fact, Chapter IVA of the said Act came into operation on December 30, 1956. The question is whether such permits already granted could be rendered invalid, even assuming that introduction of Chapter IVA in the said Act Impliedly repealed the provisions of Section 58A of the said Act. This point has been decided in a Supreme Court decision Deepchand v. State of Uttar Pradesh and Ors. (1959) 1 S.C.A. 377. The facts in that case were as follows: On April 24, 1955, the IT. P. Legislature passed the Uttar Pradesh Transport Services (Development) Act, 1955, under which the State Government was authorised to

frame a scheme of nationalisation of motor transport. After following the procedure prescribed therein, the State Government finally published a scheme on June 23j 1956. The Constitution (4th Amendment) Act, 1955, which received the assent of the President on April 27, 1955, amended Clause (2) of Article 31 of the Constitution and inserted clause 2(A) into the said Article. Under the said Article as amended, unless the law in question provides for the transfer of ownership and right to possession of any property, to the State or to a corporation owned of controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisition of property within the meaning of Clause (2) of that Article. Parliament subsequently passed the Motor Vehicles (Amendment) Act, 1956. It was held that the U.P. Act did not, on the passing of the Amendment Act, become wholly void under Article 254(7) of the Constitution, and that even if the Amendment Act be construed as repealing the U.P. Act, such repeal did not destroy or efface the schema already framed under the U.P. Act, being saved by the provisions of Section 6 of the General Clauses Act. Finally, it was held that the U.P. Act did not offend the provisions of Article 31 of the Constitution as it stood before the Fourth Amendments as it provided for payment of adequate compensation.

4. In the present case, the permits u/s 58A were granted at a point of time when the Amendemnt Act of 1956 had no come into operation. The position is that, even if the Act of 1956 is taken to have impliedly repealed Section 58A of the said Act permits which had already been granted would not be affected by reason of Section 6 of the General Clauses Act. In this view of the matter, it is quite unnecessary for me to decide as to whether the Amendment Act 100 of 1956 impliedly repealed Section 58A Even if it did, the permits granted on September 11, 1956 would not be invalidated and would continue to be valid for the period for which they were granted. The question of describe emanation also does not arise. Therefore, we are left with only one point, namely as to whether there was in fact an order made u/s 58A of the said Act. There was conflict of evidence or this point. An order was produced, which did not seem to me to be an Order issued u/s 58A. and I directed that the matter should be tried on evidence upon this point, and evidence has been taken.

5. Before I deal with the evidence adduced before me, I must refer to certain documents which have been produced by Government. They are contained in a file No. T8B-25/55 entitled "Issue of service permit for State buses in Calcutta area" and relates to the Home Department of the Transport Branch of the Government of "West Bengal. Firstly, there is a letter dated July 17, 1956, from the Administrative Officer of the Directorate of Transportation, Administration Branch, in which the said Administrative Officer wrote to the Assistant Secretary, Home (Transport) Department to the effect that in view of the gradual expansion of the Directorate of Transportation, the total number of vehicles put on route for service will soon exceed the number sanctioned as per Government order dated January 25, 1955. He was, therefore, requested that fresh service permits may be granted for stage carriages in favour of the Directorate, in respect of 700

vehicles, for operation of passenger service within the Calcutta region. At the relevant time, one Shri Dulal Krishna Dey was a clerk dealing with this file and the relevant portions are in his handwritings. Mr. J.N. Talukdar was the Chief Secretary and Shri Benoy Kumar Sen was an Assistant Secretary, both of whom dealt with the matter. Mr. J.N. Talukdar has filed an affidavit in this application dated August. 4, 1930. In that affidavit he refers to the letter of the Directorate of Transportation dated July 17, 1956, referred to above. Paragraph 3 of the said affidavit is of great importance and is set out below:

That the said letter was first dealt with in the Home (Transport) Department of the Government of West Bengal and the Assistant Secretary, Home (Transport) Department, endorsed a note recorded by the dealing Assistant, Shri Dulal Krishna Dey, on the 11th day of August 1956 in the relevant office file to the following effect:

Letter No. 2968-ST, dated 17-7-56 from the Directorate of Transportation.

The Directorate have requested that order be issued for issue of a fresh service permit for 700 buses, as the number of buses, viz, 500 included on the existing service permit will be exceeded soon.

2. As suggested, order may be issued on the R.T.A., Calcutta, to grant a service permit for 700 buses. Draft put up may issue after Secretary has seen.

6. This file was placed before me on the 13th August 1956. On considering the matter I was satisfied that an order u/s 58A of the Motor Vehicles Act should be made for grant of a permit for the Directorate of Transportation for 700 buses in the Calcutta Region, and I directed that an order in the form of the draft which was placed before me, should be issued. I made the said order on the 13th August 1956 and signed the office note. True copy of the said draft and the letter of the Directorate of Transportation, dated 17th, July 1956 are annexed herewith and collectively marked "S".

7. It will be observed that Mr. Tahikdar has stated that he directed that an order should be issued in the form of the draft which had been placed before him. He further stated that a true copy of the said draft was annexed to the affidavit included in annexure "S". A copy of that annexure is set out below:

Government of West Bengal. Home Department. Transport

ORDER

8. No. 4543-W.T/T8B-25/55. - Calcutta, the 14th August 1956.--In exercise of the power conferred by Section 58A of the Motor Vehicles Act, 1939, and in supersession of orders contained in this Department Memos Nos. 8222-WT. dated the 27th August, 1951, 1886-W.T., dated the 1st March, 1952 and 436-W.T. dated the 25th January, 1955, the Governor is in the interest of the public generally pleased to direct the Regional Transport Authority, Calcutta to grant a service permit for stage carriage in favour of the Directorate of Transportation,

Government of West Bengal, in respect of 700 Numbers State Carriages for operation of passenger Service within the Calcutta region.

9. By order of the Governor, Sd. J.N. TALUKDAR, Secy, to the Govt, of West Bengal.

10. An order in this form, with the signature "Sd. J.N. Talukdar" dated August 14, 1993, was served on the Regional Transport Authority, Calcutta Region, and upon the strength of this, permits were issued which have been questioned in this application. Therein fact no such order made on August 14, 1956 and no order exists as signed by Mr. J.N. Talukdar. What we find from the file is that at p. 4 (Ext. 1a) there is a draft order in the handwriting of Dulal Krishna Dey, written on two pages, pasted together to form one. These two pages contain no original signature, although below the draft order we find the words "Sd. J.N. Talukdar". The next page has been, variously marked as 3 and 6 and is supposed to be the continuation of this, and at the bottom bears the signature of Shri Benoy Kumar Ben dated August 13, 1956 (Ext. 1c). Almost at the back of the file there is a page marked 5, which contains the notes placed before Mr. J.N. Talukdar, and signed by him, which has been set out above. This is all that we have in the way of documentary evidence. It will be observed that Mr. Talukdar himself in his affidavit states that he directed that an order in the form of the draft which had been placed before him should be issued. This means that he had approved of the draft placed before him and he directed that an order in that form should be drawn up and placed before him for signature. No such a draft was ever placed before him for signature, nor did he ever sign it. All that we have is his endorsement on August 13, 1956, on the office note as set out above. I shall now deal with the oral evidence.. The first person to come to the box was Dulal Krishna Bey. The evidence that he gave was most unconvincing. He conceded that there was no order signed by Mr. J.N. Talukdar and certainly no order dated August 14, 1956, which was served on the Regional Transport Authority. He said that for the first time a proposal was received in the office on July 20, 1956, from the Administrative Officer, Directorate of Transportation. On August 11, 1956, he put up the note set out above, and a draft order, before the Secretary, through the Assistant Secretary. According to him, this draft, consisting of two pasted pages, was placed before the Secretary, although he has no personal knowledge as to whether it was so placed. The Assistant Secretary sent back the file to him and asked him to issue the order. I asked him why this page containing the alleged draft consists of two pages pasted together. The answer was that originally, the sheet on which p. 4 had been pasted, contained some inaccuracy in writing. Therefore, it was rewritten and pasted. He said that this is the usual way in which files were kept in his department and he was not surprised to see it, and did not find anything abnormal in it. He later on qualified his answer, by saying that he did not remember exactly why the pasting was done, but most probably there was some mistake in the recital. Finally he said that he did not remember the exact facts. Later on he changed his answer and said that he remembered that when he revised the entire draft he found that there were

certain mistakes. He could not explain why, if there was an inaccuracy, the page was not replaced, but pasted in this fashion. He was asked as to how a draft order, which had not yet been signed and was going to be put up before the Secretary, could have the entry at the bottom "Sd. J.N. Talukdar". He said that this was the practice followed by him. In short, his evidence is that the draft order Ext. Ia was the one originally drafted by him and this together with the note at p. 5, was placed before Mr. J.N. Talukdar. He has no personal knowledge whether this particular draft was placed before Mr. Talukdar. No final order in terms of the approved draft was ever put up before Mr. J.N. Talukdar for his signature. Nevertheless, on August 14, 1956, an order purported to be signed by him was sent to the Regional Transport Authority, Calcutta Region, dated August 14, 1956. There is no such order in existence. According to this witness it is quite sufficient for Mr. Talukdar to sign the note and it was not necessary to put up any draft order for signature before him, and it was also quite regular to send an order to the Regional Transport Authority, Calcutta Region, dated August 14, 1956, purported to have been signed by Mr. Talukdar. In my opinion, the entire story of this witness should be disbelieved. So far as the draft order is concerned, this witness has said that he has no personal knowledge whether this particular draft was placed before Mr. Talukdar. In para. 4 of his affidavit affirmed on August 4, 1960, MR, Talukdar has said that he made enquiries from Dulal Krishna Dey, the assistant who dealt with the file and ascertained from him that the pasted draft, which is now on the file, was the draft placed before him at the time. Examined in court, he said that in his conversation, with Mr. Talukdar, no question as to whether this particular pasted page was placed before him was ever discussed, and he said that! he had distinct remembrance of this fact. I then showed him para. 4 of Mr. Talukdar's affidavit. He at once retracted, his answer. However, he could not still go to the extent of saying that he had told Mr. Talukdar that the pasted draft was the draft which was placed before him. He said that he told Mr. Talukdar that he had put up this draft before the Assistant Secretary, to be put up before him in the pasted form. Mr. Benoy Krishna Sen was shown this pasted page and was asked, as to whether he had seen it before. At first he said no, but later on changed his answer. He however was careful enough to say that he could not say from his personal knowledge! that this particular draft was ever put up before Mr. Talukdar. As regards the words, "Sd. J.N. Talukdar" at the bottom of the alleged draft, he confessed that it was not the correct thing to do, and that it was not possible for anybody to write "Sd. J. N. Talukdar" before Mr. Talukdar actually signed it. He however said that it was the practice followed. Coming now to the evidence of Mr. Talukdar himself, he was not prepared to state on oath that this was the draft actually placed before him. But he said, he had no reason to doubt that this was not the draft, by which he probably meant that he had no reason to doubt that this was the draft. According to his evidence, he did not sign this particular draft, but sometimes they did sign and sometimes they did not, and it is a matter of argument as to whether an unsigned draft would be in order. He further added that having signed the note sheet, he did not consider it necessary to sign the draft. Talking about the draft

he said as follows:

That was the order I intended to issue ; in a sense that was the order which is to be issued. I intended that the draft should be issued, and not the order; in the form the order is alright there. I intended that the draft containing the order should be issued.

11. He said that sometimes the words "Sd. J.N. Talukdar" is appended to the draft, and he found nothing wrong in it. He admitted that he made no order on August 14, 1956, as mentioned in the order as issued, and yet he maintained that this was his order and authenticated by him. Upon the evidence discussed above, it is clear to me that nobody was anxious to prove that this particular draft order consisting of two pasted pages was ever placed before Mr. Talukdar and approved by him. Actually, it has not been proved that this particular draft was ever placed before Mr. Talukdar. Two of the witnesses have no personal knowledge of it and Mr. Talukdar himself does not remember it, but merely states that he has no doubt that this was the draft placed before him. In my opinion, it is absurd to say that a draft could be placed for approval, with the signature appended at the bottom in anticipation. The note which bears the endorsement of Mr. Talukdar, had undoubtedly been placed before him, together with a draft, although we do not know which draft was placed before him. Regard being had to the curious pasting of the two pages, and the numbering of the pages, I am of the opinion, that it is extremely doubtful if the pasted page was the draft order as put up before Mr. Talukdar, and I regret to find Government records in this state, although, why it was done in this clumsy way I cannot imagine: Whatever be the stake, Government records should never be kept in this degenerate fashion. I am unable to accept the evidence of the witnesses that this is the procedure usually adopted, and that after the Secretary approves of the draft order and directs that an order in that form should be issued, it is no longer necessary to place the draft before him for his signature or that anybody has the authority to write "Sd. J.N. Talukdar" at the bottom of the draft and forward the same to Regional Transport Authority as an order made on August 14, 1956, by Mr. J.N. Talukdar without Mr. Talukdar having signed the order. The fact is that Mr. Talukdar had signed no such order, and had made no order at all on August 14, 1956. He had approved the draft order and this order would have to be placed before him for his signature, as a person entitled to authenticate the order of the Government. When so authenticated, the order would be an order of the Government in terms of Section 58A of the said Act. The learned

12. Advocate-General argued as follows: He conceded that he was unable to show a written order signed or authenticated by Mr. J.N. Talukdar, u/s 58A of the said Act. He further admitted that the copy order which was sent to Regional Transport Authority was not the order made by Mr. Talukdar. He however says that the note set out above with the signature of Mr. J.N. Talukdar at the bottom constitutes a valid order u/s 58A. If the note with the signature of Mr. Talukdar at the bottom constitutes a valid order, then of course there is nothing further to

say, and the issue must be decided in favour of the Respondent. If, however, the note containing his signature does not constitute an order, then it must follow that in fact there is no order u/s 58A in existence. The copy of the order which was sent to the Regional Transport Authority set out above is perfectly useless, because no such order was made on August 14, 1956 and no such order was at any time signed by Mr. Talukdar. It has not also been proved that it is in accordance with the draft which was actually approved by Mr. Talukdar. As the facts are rather against the Respondents, the learned Advocate-General says, that he would argue it as a matter of law. He states that in law, the note with the endorsement of Mr. Talukdar, constitutes a valid order u/s 58A of the said Act and is in conformity with Article 166(1) and (2) of the Constitution. Article 166(1) of the Constitution provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. Clause (2) of Article 166 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 in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. It is not disputed that under rules made under Clause (2), the Secretary Mr. J.N. Talukdar was a person authorised to authenticate an order. The first case cited is a decision of the Federal Court, *J.K. Gas Plant Manufacturing Company, Ltd. and Ors. v. Emperor* AIR (1947) F.C. 38. This case related to schedule 9, Section 40(2) of the Government of India Act, 1935. This is analogous to Clause (1) and (2) of Article 166, except that the word "authentication" was not mentioned there, but "signature". The facts of that case were as follows: In February 1946, proceedings against certain accused persons were initiated before a Special Tribunal known as the Second Lahore Tribunal, in respect of certain acts of the accused, alleged to have been committed during the month of November, 1943, in contravention of the provisions of Clause 5 and 8 of the Iron and Steel (Control of Distribution) Order, 1941, Such contraventions were alleged to constitute offences punishable under the Defence of India Rules and the Tribunal proceeded to frame charges against the accused. One of the points taken was that the said Distribution Order was not a valid order, not having been passed in conformity with the provisions of schedule 9, Section 40(i) of the Government of India Act, 1935. It was contended that under a. 40(7), it was imperative that all orders and proceedings made by the Governor-General-in-Council should fulfil three requirements; (1) that they should be made by the Governor-General in Council; (2) that they should be expressed to be so made, and (3) that they should, be signed by the proper person therein mentioned. The Distribution Order, on the face of it, purported to be made by the Central Government, and it was signed by a Secretary to the Government of India. The only defect that was pointed out was that the order was not expressed on the face of it to be made by the Governor-General-in-Council. Spens, C.J.,-said as follows:

In the first place, it must be noticed, dealing with Sub-section (1) of Section 40

alone that the provision that all orders of the Governor-General in Council are to be expressed to be made by the Governor-General in Council does not define how orders are to be made but only how they are to be expressed. It appears to imply that the process of making an order precedes, or is something different from, the expression of it. It does not say that orders can only be made by "being", or "if", expressed to be made by the Governor-General in Council. Secondly, it must be noticed that these provisions are not confined to orders only. They also include "proceedings". In the case of "proceedings" it is still more clearly a method of recording proceedings which have already taken place, which is being prescribed rather than any form in which proceedings must take place if they are to be valid. Thirdly, there is the addition of the provision relating to the signature by a Secretary to the Government of India or other persons indicated, which clearly indicates that it is a provision as to the manner in which a previously made order should be embodied in publishable form.....

13. All these points in the Sub-section itself indicate that it is not a Sub-section prescribing a manner and form in which orders of the Governor-General must be made, to be valid.

14. For all these reasons in our judgment, the provision cannot be held to be mandatory and given the construction and effect claimed by the Appellants.

15. We would further add this, that in any event we are prepared to hold that Section 40(i) has in substance been complied with.

16. The next case to be cited is a Supreme Court decision, *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, . This was an application under Article 32 of the Constitution, made to the Supreme Court, for the issue of a Writ in the nature of habeas corpus and for the immediate release of the Petitioner who was alleged to have been kept in illegal detention in the Baroda Central prison. In February, 1951, the Petitioner was arrested under an order made by the District Magistrate, Surat, in exercise of the powers conferred on him by the Preventive Detention Act, 1960. On the same date the grounds of detention was served upon him, as required by Section 7 of the said Act. The Petitioner moved the High Court of Bombay under Article 226 of the Constitution. This application was dismissed. In the meantime, the case of the Petitioner was placed before the Advisory Board, which on April 5, 1951, made a report stating that in its opinion there was sufficient cause for the detention of the Petitioner. On April 13, 1951, the Government decided to confirm the order of detention and this decision was communicated to the District Magistrate, Surat, in a confidentially letter. This letter was signed by a person who was entitled to authenticate an order of the Government and it was addressed to the District Magistrate, Surat, and simply stated that- "the case of the detenu was placed before the Advisory Board. "which has reported that there is sufficient cause for his detention. Government is accordingly pleased to confirm the detention order. Please inform the detenu accordingly." The Petitioner moved the Supreme Court and one of the points taken was that this order was not in compliance with Article 166 of the

Constitution." Das, J. (as he then was), said as follows:

It follows therefore that the Preventive Detention Act contemplates and requires the taking of an executive decision either for confirming the detention order u/s 11(1) or for revoking or modifying the detention order u/s 13. But the Act is silent as to the form in which the executive decision, whether it is described as an order or an executive action, is to be taken. No particular form is prescribed by the Act at all and the requirements of the Act will be fully satisfied if it can be shown that the executive decision has in fact been taken. It is at this stage that the Learned Counsel for the Petitioner passes on to Article 166 of the Constitution and contends that all executive action of the Government of a State must be expressed and authenticated in the manner therein provided. The learned Attorney-General points out that there is a distinction between taking of an executive decision and giving formal expression to the decision so taken. Usually, executive decision is taken on the office files by way of notings or endorsements made by the appropriate Minister or officer. If every executive decision has to be given a formal expression the whole Governmental machinery, he contends, will be brought to a standstill.

17. I agree that every executive decision need not be formally expressed and this is particularly so when one superior officer directs his subordinate to act or forbear from acting in a particular way, but when the executive decision affects an outsider or is required to be officially notified or to be communicated it should normally be expressed in the form mentioned in Article 166(7), i.e., in the name of the Governor.

18. The learned Judge then proceeds to find that the provisions of Article 166 are directory and not mandatory. The learned Judge proceeds to say as follows:

Strict compliance with the requirements of Article 166 gives an immunity to the order in that it can not be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. The position, therefore, is while the Preventive Detention Act requires an executive decision, call it an order or an executive action, for the confirmation of an order of detention u/s 11(1), that Act does not itself prescribe any particular form of expression of that executive decision. Article 166 directs all executive actions to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not u/s 11(1). That such a decision has been in fact taken by the appropriate Government is amply proved on the record. Therefore there has been, in the circumstances of this case, no breach of the procedure established by law and the present detention of the prisoner cannot be called in question.

19. The next case cited is *The State of Bombay Vs. Purushottam Jog Naik*, ; *The State of Bombay Vs. Purushottam Jog Naik*, . An order was made of detention of the Respondent u/s 3(1) of the Preventive Detention Act, 1950. The order stated that the Government of Bombay was satisfied that with a view to preventing the Respondent from acting in the way prejudicial to the maintenance of public order, it was necessary to. make an order and therefore the Government of Bombay, in exercise of, the powers conferred by Sub-section (1) of Section 3 of the Preventive Detention Act, 1950, was pleased to direct that the Respondent be detained. The order was stated to be by order of the Governor of Bombay and signed by the Secretary to the said Government. The High Court of Bombay held that this order was defective as there was no compliance with the provisions of Clause (1) of Article 166, inasmuch as the order was not expressed to be made in the name of the Governor and was not protected by Clause (2) of Article 160. This decision was however upset by the Supreme Court. Bose, J., said as follows:

The short answer in this case is that the order under consideration "is" "expressed" to be made in the name of the Governor because it says By order of the Governor". One of the meanings of "expressed" is to make known there opinions or the feelings of a particular person and when a Secretary to Government apprehends a man and tells him in the order that this is being done under the orders of the Governor, he is in substance saying that he is acting in the name of the Governor and, on his behalf is making known to the detenu the opinion and feelings and orders of the Governor. In our opinion, Constitution does not require a magic incantation which can only be expressed in a set formula of words. What we have to see is whether the substance of the requirements is there.

20. The next case cited is *P. Joseph John Vs. The State of Travancore-Cochin*, . In that case, the Appellant was working as an Electric Engineer under the Government. On March 21, 1950, a notification was issued to the effect that Government was of the opinion that there were sufficient grounds for making a formal and public enquiry into the truth of the complaints of misconduct made against the Appellant, and Government, u/s 3 of the Travancore Public Servants (Enquiries) Act, 1122, committed the enquiry to a Judge of the High Court. This notification was signed by the Chief Secretary of the State. It was argued that the provisions of Article 166 had not been complied with because the order was not expressed to have been made in the name of the Rajpramukh. It was held that there was substantial compliance with the provisions of Clause (1) and (2) of Article 166, which provisions were directory only and not mandatory. The position in law may be briefly summarised as. follows:

(1) Clause (1) of Article 166 of the Constitution provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Clause (2) of Article 166 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 in rule to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) Both Clause (1) and of Article 166 are directory and not mandatory.

(4) Non-compliance with the provisions of either of the

clauses only leads to the result that the order in question loses the protection which it would otherwise enjoy, had the proper mode for expression and authentication been adopted.

(5) If the provision of either of the clauses is not carried out, that is to say, if the order on the face of it is not expressed to be taken in the name of the Governor

or if it is not properly authenticated, it could be challenged in any court of law on the ground that it was not made by the Governor, and in such a case the onus would be upon the State to show affirmatively that the order was in fact made by the Governor

in accordance with rules framed under Article 166. In other words, strict compliance with the requirements of Article 166 gives an immunity to the order, in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State.

(6) Where an order of the State Government is not in the form provided for in Clause (1) and (2), and therefore, not entitled to the protection of the presumption arising under them, an affidavit may be filed by the State Government showing affirmatively that the order in fact was made by the Governor in accordance with rules framed under Article 166.

(7) It does not follow that whenever a law requires the taking of an executive decision, the provisions of Article 166(2) are attracted. There is a distinction between the taking of an executive decision and giving a formal expression to the decision so taken. Usually, an executive decision is taken on the office files by way of notings and endorsements made by the appropriate Minister or officer. Every such executive decision need not be given a formal expression, otherwise the whole governmental machinery may be brought to a standstill. Thus, where one superior officer directs his subordinate to act or forbear from acting in a particular way the provisions of Article 166(1)(2) are not attracted.

(8) When however an executive decision affects an outsider or is required to be officially notified or to be communicated, it should normally be expressed in the form mentioned in Article 166(1) i.e., in the name of the Governor and duly authenticated. In such a case, if the provisions of Clause (1) and (2) are not satisfied it does not follow that the order is bad, but it would be subject to the provisions mentioned, above and the immunity granted by Clause (1) and (2) of

Article 166 will be lost and the onus, would be on the State Government to prove to the satisfaction of the Court that the order has been made by the Governor.

21. I shall now attempt to apply these principles to the facts of this case. It is obvious that there is a distinction between orders made u/s 58A of the Motor Vehicles Act and orders made under the Preventive Detention Act, which were the subject matter of two of the leading cases on the subject, viz., Dattatraya's case (supra) and the case of Purushottam Jog (supra). Under the Preventive Detention Act, the question was of taking an executive decision on the part of the Government. In such a case, the provisions of Clause (1) and (2) of Article 166 need not be attracted, because they do not deal with the making of an executive decision, but as to how they should be expressed in Orders made subsequent thereto. As has been pointed out by Das, J., in Dattatraya's case (supra) the position would be different if the executive decision affects an outsider or is required to be officially notified or to be communicated. In such a case, the order must be either made in the form provided for in clauses (1) and (2) of Article 166 or the immunity is lost. In this case, Section 58A of the Motor Vehicles Act requires an order to be made by Government directing the Regional Transport Authority or the State Transport Authority to grant a stage carriage permit of the State Government or any local authorities specified in the order. I am unable to accept the argument of the learned Advocate-General that such an order can even be made verbally.

22. In fact that is not the case made by the parties themselves. In the petition filed herein, it has been expressly stated that there is in fact no order in existence u/s 58A of the said Act. In answer to it, an affidavit has been filed by Shri Ramapati Bose, Director of Operation, Directorate of Transportation, Home (Transport) Department of the Government of West Bengal affirmed on May 30, 1960. In para. 6 of the said affidavit the deponent states as, follows:

I say that the said Respondent No. 6 is running the buses on the said Route No. 12C by virtue of a permit for seven hundred stage carriages issued by Regional Transport Authority of Calcutta Region which is valid up to the 11th day of September 1961. By an order dated the 14th day of August 1956 in exercise of its power conferred u/s 58A of the Motor Vehicles Act the Government of West Bengal directed the Regional Transport Authority, Calcutta Region to grant a service permit for seven hundred Stage Carriages for operation of transport passenger services within the Calcutta Region. Pursuant to the said order on the 11th day of September 1956 the Regional Transport Authority, Calcutta Region, issued a service carriage permit in favour of the Directorate of Transportation, of the Government of West Bengal, in respect of seven hundred State carriages for five years. A true copy of the said Government order is annexed hereto and marked "A."

23. The alleged order which is annexure "A" and which was in fact sent to the Regional Transport Authority; and on the basis of which the permits were granted, is in the form that has already been set out above. It has now been

proved that no such order dated August 14, 1956, was ever signed by Mr. Talukdar and the order, in the form in which it has been communicated to the Regional Transport Authority does not exist. Originally, Mr. Talukdar had not affirmed an affidavit, but when the nature of the Government file referred to above became manifest, after being produced in court, the learned Advocate-General asked for time to file a further affidavit and Mr. Talukdar subsequently filed an affidavit. As I have stated above, the matter was also heard on evidence. From the affidavit and the evidence given, the following facts emerge:

(1) On or about July 17, 1956, an Administrative Officer of the Directorate of Transportation, Administration Branch, wrote to the Assistant Secretary of Home (Transport) Department, to the effect that in view of the gradual expansion of the Directorate of Transportation, the total number of vehicles put on the route for service would soon exceed the numbers sanctioned and therefore a fresh service permit should be granted for seven hundred stage carriages in favour of the State Transport Authority.

(2) This implication was dealt with by a clerk named Shri Dulal Krishna Dey, who states that he made but certain notes and a draft order to be signed by the Secretary and handed it over to the Assistant Secretary, for being placed before the Secretary. We find that thereafter on August 13, 1956, the file was placed before Mr. Talukdar but it has not been proved that the draft order which is in the file was the draft order placed before him. From the internal evidence, I have formed grave doubts about the authenticity of the pasted pages.

(3) From the materials, before me, it appears that Mr. Talukdar approved of the draft order which was placed before him, and made an endorsement of his signature at the bottom of the note, which would signify that he directed that the final order should be placed before him for his signature and thereafter issued. No order was drawn up according to the approved draft (which also is not forthcoming) and placed before Mr. Talukdar for his signature nor did he ever sign any such order.

(4) An order dated August 14, 1956, with the words. "Sd. J.N. Talukdar" at the bottom was forwarded to the Regional Transport Authority giving the impression that an order dated August 14, 1956, had been signed by Mr. Talukdar and was being communicated to the Regional Transport Authority, but, no such order had been made and the order communicated was never signed by him and the statement in the affidavit of Ramapati Bose to the effect that by an order, dated August 14, 1956. the Government of West Bengal directed the Regional Transport Authority to grant seven hundred permits, is not a true statement. In his evidence, Mr. Talukdar has stated that on consideration of the matter he was satisfied that the order u/s 58A of the Motor Vehicles Act should be made for the grant of permit for the Directorate of Transportation. He has also stated that he directed that an order in the form of the draft which had been placed before, him should be issued.

24. It follows that the Respondents are confined to the notes made by the clerk as placed before Mr. Talukdar and signed by him. Since it has not been proved that the draft order issued was the one placed before him, the learned Advocate-General has been compelled to argue that this note as signed by Mr. Talukdar was a sufficient compliance with the provisions of Article 166 of the Constitution. I find it difficult to accept this argument. In this case, it is not a question of merely taking an executive decision as was the position in "Dattaraya!"s case (supra). Here the order had to be made and officially communicated to the Regional Transport Authority and it affects a third party. Therefore, according to the teste set out above, it should have been in the form provided for under Clause (1) and (2) of Article 166. In my opinion, there can be no possibility of compliance with these provisions because in fact no order was made. What has been proved is that Mr. Talukdar had taken an executive decision upon which an order was to be made and communicated to the Regional Transport Authority. This was precisely what was contemplated. Even assuming that the draft order now produced was the draft order approved of by Mr. Talukdar, it is clear that it was contemplated that he should sign it, otherwise there was no sense in using the words "Sd. J.N. Talukdar", at the bottom of the draft. In fact, however, the draft order which had been approved was never drawn up and placed before him for signature. It is in order to save the situation that evidence has now been given to the effect that the way in which the purported order was made was the usual practice followed and it was not necessary for Mr. Talukdar to sign the order. In my opinion, this evidence must be rejected. Such a practice cannot be too strongly condemned. It would not be resorted to even in a third-class business firm, and I refuse to believe that our Government is run by following such infantile practices. Other examples were hinted at but never produced, manipulation of Government files, which affect the interest, life and property of citizens is a grave and serious matter, and if such practices are in vogue, Government must see to it at once that they are stopped. In my opinion, the attempt to make the signed note of August 13, 1956 to serve the purpose of the Respondents has failed. Firstly, all that has been proved is that Mr. Talukdar intended to make an order in terms of the approved draft. The approved draft is not forthcoming and has not been proved to the satisfaction of the Court. Thus, it has not been proved that it is in terms of the order which was actually communicated. It might have contained terms and conditions or recitals of which we do not know. The intention was to make an order in terms of the approved draft. Since we do not know what the approved draft was, we do not know what the order would have been. Mr. Talukdar stated that he was satisfied that an order should be made u/s 58A for the issue of seven hundred permits. It has not been proved that according to the rules of business, his satisfaction was the satisfaction of the Governor. All that has been proved is that he has the power to authenticate an order of the Governor.

25. He did not in fact, authenticate any order of the Governor u/s 58A of the said Act. Therefore, there is no evidence before me to show that the Governor had

passed the order. The immunity granted by Clause (1) and (2) of Article 166 having been lost, the onus would be upon the Respondents to prove that an order had been made by the Governor and communicated to the Regional Transport Authority. No such order has been proved and the order that has been communicated had never been made and is a document having? no value whatsoever, apart from, a false suggestion that such an order was made on August 14. 1956 and signed by Mr. Talukdar. In my opinion, no order has been proved to have been made or validly made, u/s 58A of the said Act and the permits granted have been wrongly granted.

26. The result is that this rule must be made absolute and there will be a writ in the nature of mandamus directing the Respondent No. 1 to forthwith recall, cancel or withdraw the said permits dated September 11, 1956 for seven hundred stage carriages given to the Respondent No. 6 as mentioned in the petition and there will be a writ in the nature of mandamus directing the Respondents not to operate any bus on route No. 120 on the strength of such permit. This, however, will be without prejudice to the Respondents now proceeding in accordance with law. There will be no order as to costs.