

(1973) 06 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 708, 791, 792, 893, 900, 907, 908, 1022 and 1224 to 1226 of 1972

Patiala Bus Pvt. Ltd.

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 01-06-1973

Acts Referred:

Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1939 — Section 68
Road Transport Corporations Act, 1950 — Section 20

Citation : AIR 1974 P&H 140

Hon'ble Judges : Prem Chand Pandit, J;Bhopinder Singh Dhillon, J

Bench : Division Bench

Judgement

B.S. Dhillon, J.—This judgment will dispose of Civil Writs Nos. 708, 791, 792, 893, 900, 907, 908, 1022, 1224, 1225 and 1226 of 1972. Since in all these writ petitions the scheme finally approved by the State Government u/s 68-D of the Motor Vehicles Act, 1939(hereinafter referred to as the Act), Annex. "B" with this writ petition, is being impugned on the same and similar grounds, therefore, all these writ petitions are being disposed of by a common judgment.

2. The facts and the grounds as mentioned in Civil Writ No. 708 of 1972, may only be mentioned because the facts and ground of challenge in all these writ petitions are the same. All the petitioners are existing transport operators. The Patiala Bus (Sirhind) Private Limited, Sirhind, petitioner in Civil Writ No. 708 of 1972, with its head quarters at Sirhind, is holding State Carriage permits issued by the State Transport Commissioner Punjab on various routes. This Company was also operating on Ludhiana Ambala Cantt. and Mansa-Sirsa routes. It may be pointed out that before the States Reorganisation Act, 1956 was passed, Patiala and East Punjab States Union was a "B" Class State. The said State merged with the State of Punjab on 1-11-1956 in view of the provisions of the States Reorganisation Act, 1956. Subsequently, by the passing of the States Reorganisation Act, 1956, which became effective from 1-11-1966, out of the

State of Punjab, the State of Haryana was carved out and Ambala Cantt. which is a terminus of one of the routes in question, that is, Ludhiana Ambala Cantt. route, fell in the State of Haryana. Thus this route became the inter-State route. In the area, which comprised of the erstwhile State of Punjab before the merger of Pepsu Area, a Scheme (hereinafter referred to as the Punjab Scheme) for nationalisation of the transport routes under Chapter IV-A of the Act, was in operation and the said Punjab Scheme was called the 50-50 Scheme. This Scheme was evolved for a limited period and after the expiry of the period of that Scheme, another Scheme was framed by the State Government u/s 68-D of the Act and published in the Government Gazette on 19-11-1969 which is being called 60-40 Scheme. This Scheme is now in operation in the area of the erstwhile Punjab State now remnant in Punjab after the States Reorganisation Act of 1956 and a copy of this Scheme is attached as Annexure "A" with this writ petition. According to this Scheme, 60 per cent of the overall operations, that were being undertaken on or immediately before 30-6-1969 on the routes specified in the Scheme itself, were to be undertaken by the Punjab Roadways and the remaining mileage was to be operated by the existing private operators to the extent of 30 per cent and the new entrants to the extent of 10 per cent. It has been provided in the Scheme that the traffic on the then existing inter-State routes shall be shared between the State Undertaking and the existing private operators in the same ratio, that is, 60-40 but the new inter-State routes and increase on the existing inter-State routes will exclusively be operated by the State Undertaking. As I have already pointed out, this scheme covers the area of the erstwhile State of Punjab before the merger of Pepsu and Punjab and the claims of the private operators of this area have been kept in view. In view of the above mentioned provisions of the Punjab Scheme, the private operators operating on the Ludhiana Ambala Cantt. route are getting their share of 40 per cent, this route being an existing inter-State route.

3. Another scheme under Chapter IV-A of the Act was framed by the Pepsu Road Transport Corporation (hereinafter referred to as the Pepsu Scheme) which scheme has been published on 10-2-1972 and a copy of the same is attached as Annexure "B" with this writ petition. In this Pepsu Scheme, which has been finally approved by the State Government u/s 68-D of the Act, after hearing claims and objections filed by the persons u/s 68-C of the Act, a provision has been made that 60 per cent of the routes will be undertaken by the Pepsu Road Transport Corporation (the State Undertaking) and 40 per cent of the routes by the private operators. As regards the existing and future inter-State routes, a provision has been made that the said routes shall be operated by the Pepsu Road Transport Corporation alone and the private operators will not be entitled to 40 per cent share on the inter-State routes. In this respect, this provision of the Pepsu Scheme is not in consonance with the provisions of the Punjab Scheme inasmuch as in the Punjab Scheme, the existing inter-State routes have to be shared in the ration of 60-40 both by the State Undertaking and the private operators; whereas in the Pepsu Scheme the State Undertaking alone has the

right to run buses on the inter-State routes. The Patiala Bus (Sirhind) Private Limited, Sirhind and M/s. Preet Bus Service are the two private transport operators with their headquarters in the area of the erstwhile Pepsu State and thus are admittedly governed by the Pepsu Scheme. It is alleged that in the Pepsu Scheme, all inter-State routes have to be run by the State Undertaking, therefore, the permits on Ludhiana-Ambala Cantt. route which they had obtained under the authority of the Regional Transport Authority, Patiala, which Authority had the jurisdiction over the area which constituted the erstwhile State of Pepsu have not been renewed by the State Transport Commissioner, who, under the Act is the permit granting Authority. It is alleged that in view of the provisions of the Punjab Scheme, the Punjab private operators are operating their buses on Ludhiana Ambala Cantt. inter-State route whereas the Pepsu private operators have been denied this right and it is, therefore, alleged that this is a discrimination without any reasonable classification and thus the Pepsu Scheme, Annexure "B" prepared by the Pepsu Road Transport Corporation and as finally approved by the State Government is illegal and ultra vires of Article 14 of the Constitution of India and Sections 68-C and 68-D of the Act.

4. The other ground mentioned in the petition, on which the Pepsu Scheme has been challenged is that the objections filed by the objectors on the publication of the scheme prepared by the Pepsu Road Transport Corporation were heard by late Shri A.N. Kashyap, the then Financial Commissioner, as a delegatee of the State Government and that Clause (5) of the scheme, which was finally approved by Mr. Kashyap, has been changed and instead a new clause (5) has been inserted which is detrimental to the interest of the petitioners. The allegation made in the petition that as the objections against the scheme having been heard by late Mr. A.N. Kashyap, the scheme could not be approved by Shri Kulwant Singh, Secretary, Home and Transport Departments was not pressed at the time of the arguments.

5. Another ground of attack on the impugned scheme is that in view of the provisions of Section 68-D of the Act, as amended by Act No. 56 of 1969, it was incumbent upon the State Government to comply with this mandatory provision inasmuch as in publishing the draft scheme in at least one of the newspapers in the regional language and that having not been done, therefore, all subsequent proceedings culminating into final approval of the scheme are vitiated and the scheme has to be quashed on that ground. The other ground taken in the writ petition that the order of the State Government in approving the scheme, is not a speaking order and, therefore the scheme is illegal, was not pressed into service at the time of the arguments by any of the learned counsel for the petitioners.

6. Another ground urged at the time of arguments is that the Pepsu Road Transport Corporation failed to take sanction of the Haryana Government while framing the scheme governing the inter-State routes as required u/s 20 of the Road Transport Corporation Act, 1950, hence the Pepsu scheme to the extent of

dealing with the inter-State routes is vitiated and is without jurisdiction.

7. The claim of the petitioners that the impugned Pepsu Scheme, Annexure "B" is ultra vires of Article 14 of the Constitution of India or is illegal, has been contested by the State Government and the Pepsu Road Transport Corporation in their written statements. As regards Ludhiana-Ambala Cantt. route, it has been averred in the written statement filed by Shri Hari Ram, Joint Secretary, Home, Punjab Government, that there was an agreement dated 1-6-1950 concluded between the erstwhile Governments of Pepsu and Punjab prior to the re-organisation of Punjab in 1956. According to the agreement between the erstwhile Punjab and Pepsu Governments four permits fell to the share of Pepsu operators out of which two route permits on this route were allotted to the petitioner which was under the Pepsu territory and the other two to the Preet Bus Service. It is alleged that it is because of this historical background that the said two route permits continued to be operated by the petitioners, who were allotted those routes, and it is for this reason that the route permits were being issued by the Regional Transport Authority, Patiala, which authority had the jurisdiction over the area of the erstwhile State of Pepsu. It is an admitted fact that while going from Ludhiana to Ambala Cantt. on G. T. Road some area falls on the route which was in the Regional Transport Authority, Patiala, because of the fact that the said area formed the area of the erstwhile State of Pepsu. It was on this account that the erstwhile Pepsu and Punjab Governments negotiated and reached an agreement about the grant of route permits on Ludhiana Ambala Cantt. route. It is averred in the written statement that two schemes are not in any way contradictory and the private transport operators, as defined in two different schemes, are persons differently situated and are not amongst a class themselves, therefore, there is no question of any discrimination. It is contended that when 50-50 scheme in Punjab was in operation, the private operators in the erstwhile State of Punjab had to surrender 50 per cent of their claims on the Ludhiana-Ambala Cantt. route to the Punjab Roadways, but since there was no nationalisation scheme in operation regarding the erstwhile area of Pepsu, therefore, the private transport operators of the erstwhile State of Pepsu continued enjoying the route permits given to them on Ludhiana-Ambala Cantt. route and they were not affected by the Punjab scheme.

8. Another objection taken in the written statement is that the impugned Pepsu Scheme was published after an agreement, copy of which is Annex. R/A attached with the written statement filed by Shri Hari Ram, Joint Secretary, Home, Punjab Government, between the private transport operators of the erstwhile Pepsu State including the petitioners and the Pepsu Road Transport Corporation, in which all the private transport operators agreed that inter-State routes existing as well as future, will be completely nationalised and the Pepsu Road Transport Corporation will operate on those routes. It is claimed that clause (5) of the Pepsu scheme is based on this agreement.

9. As regards the non-publication of the draft scheme in the newspaper in the

regional language, it is claimed that all the petitioners filed their objections before the State Government which objections were heard by late Shri A. N. Kashyap and, therefore, no prejudice has been caused to them by the non-publication of the draft scheme. It is claimed that the provision of Section 68-D of the Act are not mandatory but directory and the draft scheme having been published in the Government Gazette, therefore, there is a substantial compliance with the provisions of Section 68-D. It has been denied that clause (5) of the Pepsu Scheme as finally published is not the same as was finally approved by Shri Kashyap. It is claimed that the final scheme is the same as was approved by Shri Kashyap and no change has been made therein.

10. As regards the objection that the approval of the Haryana Government for framing the scheme governing the inter-State routes as required u/s 20 of the Road Transport Corporation Act, has not been obtained it is contended on behalf of the respondents that the said sanction in any case was only an administrative act which act, even, if not performed, would not affect the scheme in any manner. It is claimed that since the scheme, as it concerns the inter-State routes, was finally got approved by the Central Government, which Government had approved the same after hearing the States of Punjab and Haryana, therefore, the approval of the Haryana Government and the Punjab Government was implied there, and thus there is a substantial compliance with the provisions of Section 20 of the Road Transport Corporation Act. It has been further averred that the petitions are without any merit and should be dismissed.

11. First of all I shall deal with the contention of the learned counsel for the petitioners that clause (5) of the impugned scheme, Annexure "B", as approved by late Shri A. N. Kashyap, is not the same as finally published by the State Government u/s 68-D of the Act. The contention is that in the draft scheme as published u/s 68-C of the Act the provisions regarding the inter-State routes were only regarding the future expansion operations and the existing inter-State routes were not included in this clause. In other words, it is being suggested that the draft scheme as published and the decision of Mr. Kashyap on the objections was that clause (5) should only govern the future expansion operations on inter-State routes and not on the existing ones, so that the existing routes could not be monopolized by the Pepsu Road Transport Corporation. After going through the notification in which the draft scheme u/s 68-C of the Act was published by the State Government, it is to be found that this argument is based on misconception of the facts. Clause (5) in the original draft notification No. 16869-6HT-70/26128 dated 28-10-1970 is in the following terms:--

"All operations on the inter-State routes (whether existing or new) shall, with effect from the date of final publication of this scheme in the official gazette be undertaken exclusively by the Corporation."

12. The relevant portion concerning clause (5) of the order of late Mr. A. N. Kashyap, wherein he mentioned the objections as regards clause (5) of the Scheme in his order dated 3-2-1972, is as follows:-

Clauses of the Draft Scheme. Objection/Objections. Filed by:

5. All future expansion operations on the inter-State routes (whether existing or new) shall with effect from the date of final publication of this scheme, in the official gazette, be undertaken exclusively by the Corporation. Existing inter-State routes should not be taken over by the corporation after approval of the scheme by disturbing existing operators from these routes. Private sector should also be accommodated on such routes. Operational mileage covered by other States on the inter-State routes should be counted in the share of the Corporation. Objectors at Serial No. 52 and 53 of the list in para 3.

Thus it is clear that in the draft scheme the proposal was to cover all routes whether existing or new, within the purview of clause (5) as it was because of those provisions in the draft scheme that I find from the order of Mr. Kashyap dealing with the objections to the draft scheme that the objections were raised by the objectors mentioned at serial Nos. 52 and 53 of the list, before Shri Kashyap that the existing inter-State routes should not be taken over by the Corporation after the approval of the scheme by disturbing existing operators from these routes. An objection was also made that the private sector should also be accommodated on such routes. I find from the order of late Shri A. N. Kashyap, which is attached as Annexure "R/B" with the written statement filed by Shri Hari Ram, Joint Secretary, Home, Punjab, that these objections are overruled by him. It was argued before him that if all the existing inter-State routes were given to the Pepsu Road Transport Corporation in the scheme under clause (5) that will work a great hardship to the private transport operators plying on the inter-State routes though it was conceded before him that the future inter-State routes may be exclusively taken over by the Pepsu Road Transport Corporation, but the objections that the existing inter-State routes should not be monopolised and should not be covered under C1. (5), were overruled by Mr. Kashyap and he dismissed the objections specifically holding that he saw no justification for any change in the clause (5) as published in the draft scheme. Thus it would be seen that in the draft scheme, existing inter-State routes were mentioned to be covered by clause (5) and the objectors who filed the objections against this clause before Mr. A. N. Kashyap, understood that the existing routes are also to be covered under this clause and filed objections challenging this provision in the draft scheme which objections were over-ruled by Mr. Kashyap and he approved clause (5) as in the draft scheme. The contention that clause (5) of the draft scheme only includes the future expansion operations on inter-State routes and not the existing inter-State routes, therefore, is obviously without any merit. The petitioners are trying to take advantage of a clerical mistake in the copy of the order passed by Mr. Kashyap supplied to them by the respondent wherein column (1) of his order where he dealt with clause (5) of the draft scheme, there is an omission to mention "in the existing routes". From the facts, which have been stated above, it is obvious that non-mentioning of the existing routes in column(1) of the copy of the order of Mr. Kashyap, supplied to the petitioners is a clerical mistake and the said order

which he passed clearly shows that the objections regarding the existing routes were also taken up before him which were rejected by him and this also was clear from the Government notification in which the draft scheme was published. I, therefore, see no merit in this contention of the learned counsel for the petitioners and the same is hereby rejected.

13. As regards the contention that since the permission of the State of Haryana in framing the scheme regarding the inter-State routes was not obtained by the Pepsu Road Transport Corporation, as is envisaged u/s 20 of the Road Transport Corporation Act, 1950, and therefore, the scheme is vitiated, I am inclined to hold that there is no merit in this contention as well. No doubt the Pepsu Road Transport Corporation is a corporation constituted under the Road Transport Corporation Act, 1950, and the provisions of S. 20 of the said Act are applicable to this Corporation, but the question still remains whether the non-taking of the sanction regarding the scheme of inter-State routes will vitiate the scheme prepared u/s 68-D of the Act ? My answer to this question is that the scheme prepared u/s 68-D of the Act, as finally approved by the Central Government, according to the provisions of that Act, would not be vitiated because in my opinion, there is a substantial compliance with the provisions of Section 20 of the Road Transport Corporation Act, as from the Government file I find that this scheme in question was approved by the State Governments of Haryana and Punjab. Similar view was taken in a Bench decision of the Mysore High Court in *A. Vishwanath Rao v. State of Mysore* AIR 1968 Mys 104 when similar objection was raised to a scheme framed u/s 68-D of the Motor Vehicles Act, that the provisions of Section 20 of the Road Transport Corporation Act were not complied with. It was held that the essence of Section 20 is that the State Transport Corporation shall not embark upon operation on a route which is situate outside the State in which it functions, without the approval of the Government of the State in which it is situate and the concurrence of the other State. It was further held that if the approval of the Government of its own State and the concurrence of the other State has been secured as a matter of fact the omission to make a scheme in the precise manner in which Section 20 directs amounts to no more than a mere curable irregularity which does not lead to the nullification of the scheme.

14. The same case went to the Supreme Court and the same arguments were raised before their Lordships of the Supreme Court in the case reported in *A. Vishwanath Rao etc. Vs. The State of Mysore and Others*, , which arguments were negatived on the ground that the concurrence of both the Governments have been secured before the approval of the final scheme was recorded. In those circumstances, the omission of the Transport Corporation to make a scheme in the precise manner in which Section 20 of the Road Transport Corporation Act, directs is a mere irregularity which cannot lead to nullification of the final scheme published. For the reasons recorded above, I am of the opinion that there is no merit in this contention as well.

15. The next contention of the learned counsel for the petitioners, that the provisions of Section 68-D of the Act, where by providing publication of the draft scheme in not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme, are mandatory and in this case admittedly since the draft scheme was not published in any one newspaper in the regional language circulating in the area, therefore, the whole scheme is vitiated, is again without any merit. Whether a particular provision in a statute is mandatory or directory, is a question to be resolved from the various other provisions of the statute itself. Merely because the provisions of Section 68-D of the Act for the publication of the draft scheme in the newspaper in regional language was brought in my amendment in the year 1969, it is difficult to hold on this ground alone that this provision is to be deemed to be mandatory.

16. The other relevant provisions of the Act and the various purposes for which the said provisions were made, have to be kept in view. In my opinion, it is difficult to hold that even though all the petitioners came to know of the publication of the draft scheme and did file objections against the same and had the opportunity of being heard before late Mr. A. N. Kashyap, still the non-publication of the draft scheme in a newspaper in a regional language, should vitiate the scheme. The provisions may be directory or mandatory but if it is shown that by the non-observance of such provisions a prejudice has been caused to the person complaining of the non observance of the provisions, on the facts of a given case, relief can be given to a person who has been directly affected, but merely because there has been some omission, the petitioners cannot be allowed to take advantage of the same especially when they have not been able to make out any case for their interests having been prejudiced by the non-observance of these provisions. All the writ petitioners, except the petitioners in Civil Writ Nos. 893 and 900 of 1972, have averred in their petitions that they did file objections and were heard by Mr. A. N. Kashyap, therefore, they have not even alleged that their interests were prejudicially affected because of the non-publication of the draft scheme in the newspaper of the regional language. As regards the writ petitioners in Civil Writs Nos. 893 and 900 of 1972, though they have alleged that they did not know about the publication of the draft scheme, yet they have not specified as to what is the prejudice caused to them. In other words, they could take the Court in confidence by pleading and proving that had they known the publication of the draft scheme, these precise objections they would have taken, which might or might not have prevailed with the State Government in considering the objections, but in order to show prejudice, they have to take some grounds in the writ petition so that the Court may feel convinced that they have been actually prejudiced. No doubt it has been alleged by the writ petitioners in Civil Writs Nos. 893 and 900 of 1972 that they did not know about the publication of the draft scheme. This allegation has been denied by the State Government as well as by the Pepsu Road Transport Corporation. It has been averred that the draft notification scheme was duly published in the Government notification and reliance has been placed on the

provisions of the General Clauses Act, to conclude that a publication in the notification is a conclusive proof of publication so made. It has further been averred in the written statements that the Pepsu Motor Federation, which is a representative body of the private motor transport operators of the erstwhile Pepsu area, in their representative capacity, filed the objections and since all the private operators were party to an agreement before the Scheme was published, therefore, the petitioners also knew about the publication of the draft scheme. However, as I have already stated, no grounds have been mentioned in the petition wherein it could be shown that any prejudice has been caused to the petitioners. From the perusal of the order of Mr. Kashyap, it is apparent that all types of objections against the scheme were even raised by a number of persons and the varieties of objections were disposed of by him on merits. It is, therefore, obvious that on the facts and circumstances of these cases, it is difficult to hold that there had been any prejudice to the petitioners for the non-compliance of these provisions.

17. Even otherwise, I do not think that this provision is a mandatory provision of the type that its non-compliance would vitiate the proceedings and for that I have a number of reasons to give.

18. Firstly, a provision is mandatory and its violation can vitiate the proceedings when in the statute itself a penalty for the non-observance of such a provision has been provided. Where a penalty has been provided, it can safely be inferred that the Legislature intended that the said provision should be observed meticulously and the non-compliance would incur penalty. There is no such penalty provided for the non-observance of the provisions of Section 68-D of the Act, now under discussion.

19. Secondly, it is u/s 68-C of the Act that the provisions regarding the preparation and publication of the draft scheme have been made. It has not been provided in this section that the draft scheme has to be published in the newspaper in regional language. What has been provided in this section is that the draft scheme shall be caused to be published in the official Gazette and also in such other manner as the State Government may direct. There is no allegation that the State Government has framed any rules by which it has given any direction that the scheme should be published in any newspaper in a regional language and it is thus clear that if the Legislature wanted that the scheme in all circumstances must be published in a newspaper in a regional language, it could safely provide so in the provisions of Section 68-C of the Act which in fact governs the publication of the draft scheme, but there is no such provision to that effect. Further it has to be seen that the limitation for filing objections u/s 68-D of the Act as provided is 30 days from the date of its publication in the official gazette. The limitation thus would start, the moment the scheme is published in the official gazette. If the publication of the scheme in a newspaper in the regional language, was mandatory, the Legislature would have certainly provided the starting of the limitation for filing the objection from the date of

publication of the draft scheme in a newspaper in the regional language. It would further be seen that under the provisions of sub-section (3) of Section 68-D of the Act, the final scheme has only to be published in the official gazette and there is no requirement that the same should be published in the newspaper in the regional language. All this would indicate that the provisions under discussion are not of that character that their non-compliance should vitiate the whole proceedings especially when no prejudice is shown to have been caused to the petitioners for the non-compliance of the same. The authority of the Supreme Court reported in *Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others*, relied upon by Mr. Keer, the learned counsel for the petitioners in Civil Writ No. 907 of 1972, is distinguishable and does not apply to the facts and circumstances of the present case. Their Lordships of the Supreme Court in that case, were considering the various provisions of the Bihar Land Reforms Act, 1950, and while noticing the various provisions of the Act, came to the conclusion that the provisions of publication of the notification at least in two issues of the newspaper having circulation in the State of Bihar, was mandatory. It would be seen that in the provisions of that Act, the issuance of a notification u/s 3 of the said Act, divested the proprietors of their rights in the property and Section 4 mentioned the consequences of the vesting of an estate or tenure in the State. That was not a provision where some preliminary notification was to be published and objections etc. were to be invited, but the provision was regarding the issuance of the notification which would divest the proprietors of their rights in the property completely. The publication, in the present case, is only with a view to inform the people so that they can raise objections, which purpose is also served by issuing the notification in the official gazette. The decision of the Supreme Court referred to above is based on the interpretation of a completely different statute having different provision than the one applicable to the present than the one applicable to the present cases before us, therefore, this authority is of no help to him.

20. Similarly the other two decisions reported in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, and *M.N. Gangappa (Dead) by Lrs. Vs. Atmakur Nagabhushanam Setty and Co. and Another*, , are the cases decided on their own facts and are of no assistance in deciding the point in issue.

21. The authorities reported in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, : *Commissioner of Income Tax, Punjab, Jammu and Kashmir and Himachal Pradesh, Simla Vs. Ram Sarup*, and *Piara Singh and Others Vs. The State*, , relied upon by Mr. Kuldip Singh Keer, the learned counsel for the petitioners in C. W. No. 907 of 1972, for the proposition that if the Legislature brings any amendment in the provisions of the Act, the amendment brought is always to be taken as mandatory, in fact do not hold so. It would depend upon the facts of each amended statute whether the amendment should be taken to be so mandatory so as its non-compliance should vitiate the whole proceedings or whether it is of directory nature and the interference by the Courts is warranted on the ground of its non-compliance only when the material

prejudice is shown.

22. A Division Bench of the Kerala High Court in *Kuttapan Nair v. State of Kerala* 1962 KLJ 262 held that the non-compliance of Rule 5 which required the publication of the draft scheme prepared u/s 68-C of the Act, in a daily newspaper, was directory, and the non-publication of such a scheme in the daily newspaper will be only an irregularity. This decision subscribes to the view which I have taken in this regard.

23. Therefore, the contention that since the draft scheme was not published in the newspaper in a regional language having circulation in the area which is the subject-matter of the scheme, and thus the whole proceedings are vitiated, cannot prevail and the same is hereby rejected.

24. The other contention raised during the course of arguments by Mr. N. K. Sodhi, one of the learned counsel for the petitioners, is that the scheme Annexures "A" and "B" are vague and are capable of being misused, as according to him it has not been specified in either of the schemes that is, in the Punjab Scheme, Annexure "A" or in the Pepsu Scheme, Annex, "B" as to which particular route or area, the same will be applicable. It is contended that in a given case, the State Transport Commissioner, who is the permit granting authority under the Act, as amended by the Punjab State, can apply either of the schemes and thus different results may follow which may lead to discrimination. This contention, in my opinion, cannot also prevail. I am inclined to agree with the contention of Mr. D.S. Nehra, the learned counsel for the Pepsu Road Transport Corporation, that the said hypothetical question cannot and should not be gone into at this level. There is no sufficient data given or alleged in the petitions to urge the said argument and no such ground has been raised. Moreover, there is no allegation that in the case of any of the writ petitioners, the scheme has been misapplied or in other words, if in fact the Scheme Annexure "A" was applicable but the Scheme Annexure "B" was made applicable. This question can only be appropriately determined if on the given facts of a case a question is raised before an appropriate authority and the same is decided one way or the other so that the necessary facts, on which the interpretation of the scheme is to be based, are crystal clear and the argument cannot be examined merely on vague hypothesis without reference to facts. After examining the schemes Annexures "A" and "B", I do not find any force in this contention.

25. The main objection of the learned counsel for the petitioners on this account is that if a new inter-State route comes into existence, it cannot be said as to which scheme will apply and the Provincial Transport Commissioner can apply any of the schemes. This contention is also without any merit. It is provided in clause (4) of the Scheme Annexure "A" that all operations on new routes or on account of increase in traffic on the existing routes, specified in Annexure "A" shall be undertaken in the manner prescribed in that clause. This clause has to be read along with sub-clause (d) of clause (1) of the Punjab Scheme, Annexure "A" which defines the Punjab territories meaning the territories of the State of

Punjab excluding the Pepsu territories. The Pepsu territories are defined in sub-clause (c) and thus if an inter-State route comes into existence in future, which is the inter-State route qua Punjab territories defined in the Punjab Scheme, the Pepsu Scheme cannot be made applicable. Similarly, keeping in view the provisions of clause 2, sub-clauses (b), (c), (d) and (e) of the Pepsu Scheme Annexure "B" the question whether this scheme will apply to the facts of a given case, can be easily solved, and I do not see any vagueness in this regard, in the scheme. The learned counsel for the petitioners could not point out as to what kind of vagueness in the scheme they were spelling out and if on the facts of a given case, it can be argued that both the schemes can be made applicable, in that case the matter could be gone into further, but keeping in view the facts of these cases, this argument appears to be without any basis and cannot be examined any further.

26. The only other argument stressed is regarding the infringement of Article 14 of the Constitution of India and the charge of hostile discrimination as against the petitioners, who are private transport operators in the erstwhile area of Pepsu. The argument thus proceeds that the private operators who are operating in the State of Punjab, as it now exists, cannot be subject to two different schemes under Chapter IV-A of the Act and the said schemes also providing different provisions, that is in Punjab Scheme, Annexure "A", nationalisation on inter-State routes is 60-40 per cent; whereas the nationalisation on the inter-State routes in the Pepsu Scheme, Annexure "B", is cent per cent. It is on this ground that it is contended that the private operators of the existing State of Punjab are being discriminated as one set of persons, that is, private operators covered by Punjab Scheme Annexure "A" are entitled to 40 per cent inter-State routes; whereas the private operators covered by the Pepsu Scheme, Annex. "B" in the Pepsu area are not entitled to the allotment of 40 per cent of the inter-State routes and the whole monopoly is taken by the State Undertaking in view of clause (5) of the Pepsu Scheme. It is contended that this classification has no reasonable nexus with the objects to be achieved under the provisions of Sections 68-C and 68-D of the Act and that being so, clause (5) of the Pepsu Scheme is ultra vires Article 14 of the Constitution of India as the same class of persons, that is, private transport operators in the existing State of Punjab are being discriminated. The argument at the face of it appears to be attractive but when the same is analyzed keeping in view the provisions of Sections 68-C and 68-D of the Act, it is difficult to hold that Article 14 of the Constitution of India in any case has been violated. It is conceded by the learned counsel for the petitioners that the Pepsu Scheme, which is sought to be impugned, at the face of it is not discriminatory as all the persons dealt within the scheme are being equally treated and there are no two classes of persons made to come into existence by the said Scheme. But the argument proceeds that when this Scheme is examined in view of the provisions of the Punjab Scheme, Annexure "A" only then discrimination comes in. In order to examine whether there is any discrimination in the Pepsu Scheme and if so, whether both the Schemes are

based on reasonable classification or not, the first question to be determined is whether can the two schemes under Sections 68-C and 68-D of the Act, be framed by one State Government qua certain routes, or part of them and further whether it is permissible under Sections 68-C and 68-D of the Act that there is over-lapping of areas and routes being the subject-matter of two different schemes or not. The purpose for framing the schemes under Chapter IV-A by the State Transport Undertakings is for providing efficient, adequate, economical and properly co-ordinated road transport service qua particular nature of services proposed to be rendered qua an area or route or portion thereof proposed to be covered. As I read the provisions of Sections 68-C and 68-D of the Act, the said provisions do not prohibit the existence of two State Transport Undertakings in one State so that it can legitimately be presumed that in a particular State, there can be two State Transport Undertakings. If that is, so, each of the State Transportation Undertaking is competent to frame a Scheme under Chapter IV-A of the Act qua certain routes, area or portion thereof for the purposes of providing efficient, adequate, economical and properly co-ordinated road transport service of the nature specified in the Scheme. The provisions of Sections 68-C and 68-D of the Act also do not prohibit the plying of the buses by two State Transport Undertakings on a part of the same area or route. For instance, a route starting from Patiala via Ludhiana, Moga to Faridkot is a route which starts and terminates in the erstwhile territories of Pepsu which should be the subject-matter of a Scheme framed by the Pepsu Road Transport Corporation, but while covering this route, in between good deal of area falls, which was in the erstwhile State of Punjab, for instance, Rajpura to Ludhiana, Ludhiana to Moga etc. Etc. Thus in route which is covered by the Pepsu Road Transport Corporation from Patiala to Faridkot, there are a number of other stations which fall in the erstwhile State of Punjab and there is overlapping qua the area in the two schemes which, in my opinion, is permissible and there is no bar under the provisions of Sections 68-C and 68-D of the Act. If the provisions of Chapter IV-A are capable of postulating the preparing of two schemes by two different State Undertakings in a particular State, it is difficult to see that there may be no overlapping of the area or portions thereof covered by such schemes. It is practically impossible for framing one scheme for one route or a particular area. When the routes are determined, their starting points and termini are fixed. The starting point of a particular route may be in one district and terminus may be in the other. Even while travelling from a place in one district to another place in the same district, the territory of another district may intervene. The passengers cannot be asked to step down from the buses of a particular Undertaking if the buses of the said Undertaking cannot travel on the routes which are supposed to be covered by different schemes and by different Undertakings. That will negative the very purpose for which the scheme has to be framed because that would mean a lot of inconvenience and wastage of time of the passengers. The provisions of Sections 68-C and 68-D have been made for the efficient, adequate, economical and properly co-ordinated road transport service, which would mean efficient service to the passengers so that the

passengers travelling from any side are not put to any inconvenience in reaching the other corner of the State. If two State Transport Undertakings in a particular State are permissible, the overlapping of certain portion of the routes and areas, for which two schemes are prepared separately by the two State Transport Undertakings, is also permissible, provided the said Schemes are framed to achieve the object mentioned in Section 68-C of the Act.

27. The contention that the classification of the operators of the erstwhile Pepsu area and that of the erstwhile Punjab State, in the two schemes, have no nexus with the object to be achieved u/s 68-C of the Act, is without any merit. The ingredients of Sections 68-C and 68-D of the Act are satisfied the moment a State Transport Undertaking frames a scheme for the purpose of providing efficient, adequate, economical and properly co-ordinated road transport service qua any area or route or a portion thereof. The object to be achieved is the providing of an efficient, adequate, economical and properly co-ordinated road transport service qua some area, route or a portion thereof and the moment a scheme satisfies these ingredients, the provisions of the law in this regard stand satisfied. If two schemes can be separately framed, in that case, the provisions of the scheme qua the percentage of nationalisation may also differ because the purpose for framing the scheme is to provide efficient, adequate, economical and properly co-ordinated road transport service qua the area, routes or a portion thereof. The nationalisation may be complete as the object to be achieved u/s 68-C would be well served by complete nationalisation in one scheme and in another scheme prepared the nationalisation may be partial as the facts and circumstances may justify the partial nationalisation satisfying the purpose of providing efficient, adequate, economical and properly co-ordinated road transport service. The alleged unreasonable classification qua the erstwhile Pepsu private transport operators and the Punjab private transport operators, has, in fact nothing to do with the provisions of Sections 68-C and 68-D of the Act. The schemes prepared under Chapter IV-A are completely for different purposes and for the purposes of satisfying the claims on the route permits which still remain to be allotted after partial nationalisation to the private transport operators in accordance with the other provisions of the Act which govern the allotment of route permits by the appropriate authorities the interests of private operators have been protected in the other portions of the scheme. Therefore the mode of allotting the permits falling in the share of the private transport operators and their classification is in fact not within the purview of Sections 68-C and 68-D of the Act and the same have to be allotted in accordance with the relevant provisions of the Act which deal with the said allotment but in order to settle the claims of the private transport operators, both the schemes, which operate in different areas and there may be some overlapping also, deal with the subject-matter of allotment of route permits to the private transport operators and for this purpose, in view of the historical background, which fact is apparent because of the existence of the erstwhile State of Pepsu which ultimately merged in the State of Punjab and after this merger another reorganisation having taken place,

which brought into existence a new State of Haryana, the making of two classes of the private transport operators, one operating in the erstwhile State of Punjab and the other in the erstwhile State of Pepsu, cannot be held to be an unreasonable classification so far as the private transport operators are concerned. The two areas are being governed by separate Regional Transport Authorities and the existing State of Punjab stands divided into two regions. According to the scheme of the act, the Regional Transport Authority renews and issues the permits and also invites applications of the claimants. Therefore, a classification made because of the historical background and because of the two Regional Transport Authorities being in existence regarding the private transport operators operating in the erstwhile States of Punjab and Pepsu, that is, within the jurisdiction of the present two Regional Transport Authorities, cannot be held to be any unreasonable classification. Both the Schemes separately deal with the private transport operators operating in two different regions in the present State of Punjab with a view to settle the claims of the private transport operators and for avoiding confusion for the allotment of route permits to the private transport operators of each region. As I have already said that in the erstwhile State of Punjab, earlier there was another scheme in existence which was called 50-50 scheme which scheme has been now replaced by the 60-40 scheme; whereas in the erstwhile State of Pepsu, there was no scheme of nationalisation framed earlier and, therefore, in both the States, the private transport operators operating therein had to be treated differently because of this historical backgrounds.

28. The main argument raised on behalf of the learned counsel for the petitioners is regarding the Ludhiana-Ambala Cantt. route which according to them falls within the territories of erstwhile State of Punjab and it is contended that on the said route, the erstwhile Punjab operators in scheme, Annexure "A" are having their share of 40 per cent whereas qua four route permits, which came to the share of erstwhile State of Pepsu and ultimately to the Regional Transport Authority, Patiala, the private transport operators are not being given their share of 40 per cent. It has to be seen that the said two route permits were allotted to the erstwhile State of Pepsu because of the inter-State agreement regarding which I have already made a reference and, therefore they continued to fall to the share of the Regional Transport Authority, Patiala, which admittedly invites applications and renews permits. Since the area within the jurisdiction of the Regional Transport Authority, Patiala, and the routes falling to its share are governed by the Pepsu Scheme, Annexure "B", therefore, the provisions of the said scheme will apply and according to clause (5) of the Pepsu Scheme, the inter-State routes, existing and future, should completely be taken over by the Pepsu Road Transport Corporation. When the 50-50 Scheme was in operation in the erstwhile State of Punjab, the private transport operators of the erstwhile State of Punjab had to surrender their 50 per cent share on the Ludhiana-Ambala Cantt. route as well; whereas the private transporters of Pepsu had previously not to surrender anything because there was no nationalisation scheme in

operation in the State of Pepsu and so the route permits falling to the share of the erstwhile Pepsu State, continued. It would thus be seen that the private transport operators covered by the Punjab Scheme, Annexure "A" are differently situated than the Pepsu private transport operators, who, according to the historical background, were always being treated separately. Therefore, the private transport operators of the erstwhile State of Pepsu, cannot be held to be the persons similarly situated as the private transport operators of the erstwhile State of Punjab are. It is well recognised that reasonable classification is permissible and while considering the reasonable classification, the historical background of a particular case has to be taken notice of. In this situation, the argument that Article 14 of the Constitution of India has been violated, is without any merit and the same has to be rejected.

29. It was contended by Mr. Keer the learned counsel for Messes Chahal Transport Company, petitioner in Civil Writ No. 908 of 1972, and the counsel for M/s. Dhillon Transport Company, petitioner in Civil Writ No. 907 of 1972, that the route Budhlada-Sardulgarh is not an inter-State route and, therefore C1. (5) of the Pepsu Scheme, Annexure "B", would not apply. Similarly, it was contended that Budhlada-Jakhal route is not an inter-State route as the place where the route terminates at Jakhal is within the State of Punjab. He, therefore, contended that the non-allotting the permits to the petitioners on these routes is illegal. This contention cannot be allowed to be raised here for the first time before this Court. Whether a particular route is an inter-State route or not, is a question of fact. This Court cannot determine as to whether the bus-terminus at Jakhal is in the present State of Punjab or in the State of Haryana. If a particular route is not an inter-State route, according to the petitioners, it is open to them to make an application before the appropriate authorities for claiming their share of 40 per cent on the ground that the routes in question are not inter-State routes and are not covered by clause (5) of the Scheme. It is for the appropriate authority to determine as to whether a particular route is an inter-State route or not and whether C1. (5) of the Scheme would apply or not. This argument cannot be allowed to be raised in the present writ petitions and therefore, this submission should also fail.

30. Before I part with judgment, I may mention here that it was vehemently contended by Mr. Nehra the learned counsel for the Pepsu Road Transport Corporation that the petitioners, through the President of their Union, that is, the Private Motor Operators Union, Shri Jagjit Singh Gandara, had agreed to the framing of the Scheme as finally published, and, therefore, they are estopped from challenging the scheme. It may be observed that the alleged agreement, copy of which is Annex. "R/A" attached with the return filed by Shri Hari Ram Joint Secretary, Home, Punjab Chandigarh, is purported to be signed by Shri Jagjit Singh, who described himself as President, for and on behalf of all the Motor Operators in private sector in the erstwhile State of Pepsu. Though from the list attached with Annexure "R/A", it appears that most of the private transport operators, whose names have also been mentioned in the list, were

present in the meeting held on 20-8-1970 after which meeting this agreement is alleged to have been signed by Shri Jagjit Singh, President for and on behalf of the Motor Operators in private sector in the erstwhile State of Pepsu, but it had to be seen that in the case of some of the petitioners, who are private transport operators, their presence is not noted. Moreover, it is not clear that any proceedings, were recorded in the presence of the private transport operators. The agreement does not disclose that it was drawn out in the presence of all the private transport operators. Nothing has been placed on the record to show that Shri Jagjit Singh Gandara had a legal authority on behalf of all the Motor Operators in private sector in the erstwhile State of Pepsu, to enter into such an agreement which agreement is not at all postulated by the provisions of Chapter IV-A of the Act. In any case, if this Court comes to the conclusion that the impugned scheme Annexure "B", violates Article 14 of the Constitution of India, the said scheme would have been struck down on this ground being violative of the Constitution and no amount of consent on the part of the petitioners or the private transport operators of erstwhile State of Pepsu could make the scheme with jurisdiction which if found to be suffering from a fundamental defect. Therefore, the writ petitions cannot be dismissed on this preliminary objection and the merits of the contentions of the learned counsel of the parties have, therefore, been elaborately discussed.

31. I may mention that the learned counsel for the parties referred to some authorities laying stress that the classification must be a reasonable classification having nexus with the object to be achieved regarding a statute and mentioning as to in what circumstances Article 14 of the Constitution of India will be attracted, but none of these authorities is helpful in throwing any light for examining the facts and circumstances of these cases. Therefore, I have preferred not to mention these authorities in the judgment and have tried to analyse the provisions of the Act and the Scheme framed thereunder keeping in view the principles which govern the application of Article 14 of the Constitution of India.

32. For the reasons recorded above, there is no merit in all these writ petitions and the same are hereby dismissed. However, keeping in view the facts and circumstances of the cases, there will be no order as to costs.

Prem Chand Pandit, J.

33. I agree that these writ petitions be dismissed, but with no order as to costs.

34. Petitions dismissed.