
(1994) 10 KL CK 0041
In the High Court Of Kerala
Case No : O.P. No. 5745 of 1994-H

P.K. Poulose

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Constitution of India, 1950 — Article 19(1)(9)
Motor Vehicles Act, 1988 — Section 67(D)

Citation : AIR 1995 Ker 234

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : P. Gopalakrishna Menon, for the Appellant; V. Sankara Menon, Govt. Pleader, for the Respondent

Judgement

D.J. Jagannadha Raju, J.—In this batch of writ petitions the validity of the Government's notification G.O.(P) No. 19/94/PW & T, Public Works and Transport (M) Department dated 28-3- 1994 issued as S.R.O. No. 364 of 1994, it challenged. In different writ petitions slightly different prayers are made. But the main attack is against Ext. P10. The main reliefs prayed for are as follows : to issue a writ of certiorari to quash S.R.O. No. 364 of 1994; to issue a writ of mandamus to allow the petitioners to operate services as fast passenger services in terms of valid permits or in terms of permits that are to be issued, collecting fares as prescribed in the fare revision notification without insisting upon the fulfilment of the conditions in Clause F of S.R.O. No. 364/94.

2. The historical background for this litigation has to be stated in brief. Originally private operators (petitioners) were not permitted to operate limited stop services, fast passenger services, fast passenger with limited stop services, super fast services, express services, super express services etc. Government reserved this right of running express service, fast passenger services etc., to fleet owners who are running a fleet of more than 150 stage carriages. It was exclusively reserved to the Kerala State Road Transport Corporation which was

the only fleet operator with more than 150 stage carriages. That reservation was challenged in a batch of writ petitions and this Court by judgment dated 9-8-1989 in O.P. No. 10375/88 held that the scheme of the Motor Vehicles Act of 1939 does not provide for any exclusive privilege for the fleet owners to run the fast passenger services and that exclusive right conferred by a notification issued u/s 43(1)(i) cannot interfere with the scheme of the Act and that the definition of "fleet owner" in that notification dated 6-11-87 does not bar the right of the private operators to run fast passenger or express services. Subsequently after the new Motor Vehicles Act came into force on 1-7-1989 the writ appeal filed against that judgment was dismissed as not pressed. Subsequent to that litigation coming to close a number of private operators agitated for their right to run express services and fast passenger services and the State Transport Appellate Tribunal upheld their claim in a batch of appeals. Questioning the decision of the State Transport Appellate Tribunal the State Government of Kerala filed O.P. No. 731 of 1993 and other original petitions and they are still pending. In that original petition the State Government filed C.M.P. No. 1377/1993 and sought stay of the judgment dated 18-11-1992 of the State Transport Appellate Tribunal. This Court refused to grant stay as prayed for. As the State was unable to obtain stay order in O. P. No. 731/93 and thus prevent the private operators from operating fast passenger services and express services the State came forward with an ingenious method to defeat the claims of the private operators from running fast passenger, limited stop fast passenger, express and super, express services by issuing S.R.O. No. 364/94. On the pretext of revising the fares in exercise of its powers u/s 67 of the New Motor Vehicles Act, the State has imposed several onerous conditions which virtually make it impossible for the private operators to run the fast passenger, fast passenger limited stop and express services. By imposing several unworkable restrictions in paragraph F of the "notification the Government virtually is trying to prevent the private operators from running the fast passenger and express services. Conditions (ii), (iii) and (iv) of Paragraph F are impossible of compliance. The net result of the notification is to exclude the petitioners from operating fast passenger and express services.

3. In this batch of writ petitions Sri P. Gopalakrishna Menon led the arguments and his arguments were adopted by the other petitioners and certain other learned advocates supplemented his arguments. Smt. Sumathi Dandapani and Sri K.V. Gopinathan Nair advanced additional argument to support the petitioners' claims. The sum and substance of the arguments can be briefly stated. The notification issued as S.R.O. No. 364/94 is one issued u/s 67(1) of the Motor Vehicles Act, 1988. That section only contemplates mere revision of fares and freights. The various conditions imposed by way of directions in the notification are outside the ambit of Section 67(1). Conditions (ii), (iii) and (iv) of Paragraph F of the notification are impossible of performance. No private operator who is anxious to run the fast passenger and express services can afford to provide advance reservation facilities of seven days reservation at both

ends of the route and at all important stations on the route. Similarly no private operator can provide his own bus stations/garages with retiring rooms, latrines, urinals separately for ladies and gents, refreshment stall and reservation centres at all the places of halting of the stage carriage. The notification also prohibits the operators from treating bus stations owned and provided by the local bodies as those provided by the private operators. Irrespective of the fleet strength they are also expected to keep a Reserve Bus as contemplated under Rule 182 of the Kerala Motor Vehicles Rules, 1989. It is also urged that under the guise of issuing directions u/s 67(1) the State is now trying to impose onerous conditions which are impossible of performance and it is also imposing conditions which are contrary to the provisions of the Motor Vehicles Act and various other statutes.

4. The respondents filed one counter in O.P. No. 5754 of 1994 and it is adopted as counter in all the original petitions. The Government Pleader takes the stand that S.R.O. No. 364/94 is issued for the benefit of the general public travelling for long distance. The necessary and minimum comforts for such passengers are sought to be provided by this notification because they are asked to pay a very high fare for the privilege of travelling in fast passenger and express services. The effort of the present petitioners is to take advantage of the higher fares provided in the notification and at the same time they wish to avoid the bounden duties and responsibilities cast on them to provide facilities. The petitioners cannot be permitted to have the benefits of the notification while avoiding responsibilities cast on them under the same notification. Their main attack is against paragraph F. If paragraph F is to be struck down the entire notification has to be quashed. Earlier there was no necessity to issue notifications similar to S.R.O. No. 364/94 because only the fleet owners were entitled to operate these fast passenger and express services and K.S.R.T.C. alone had the exclusive privilege and it has provided all facilities now sought to be provided in this notification. On the strength of the Court orders the private operators are now running fast passenger services and express services. There is absolutely no oblique motive in issuing S.R.O. No. 364/94. The allegation of mala fides and oblique motive is baseless. The notification is issued with good intentions. The Government Pleader particularly emphasises that the effort of the present writ petitioners, private operators, is to avoid transporting of students who are entitled to concessional fares by running only fast passenger and limited stop fast passenger services in which the student concession will not be permitted. In effect they are only asking the right to run remunerative services only. They are also at the same time trying to deprive the benefits of fare revision indicated in S.R.O. No. 364/94 while they are not willing to provide the various conveniences as stipulated in the notification. The Government Pleader contends that the notification is not severable and if the Court finds that the conditions in paragraph F are not valid then the entire notification has to be quashed. The Court cannot grant relief by quashing only paragraph F. That would create anomalous consideration for giving benefit to the private operators. There is no justification for the steep-hike in fares granted by S.R.O. No. 364/94 unless

correlated responsibilities are also discharged by them.

5. To resolve the rival contentions in this batch of writ petitions it is necessary to refer to certain statutory provisions under the 1939 Motor Vehicles Act as well as 1988 Motor Vehicles Act and the rules framed thereunder. It is also necessary to refer to certain provisions of the Panchayat Act and the rules thereunder. I shall briefly set out the statutory provisions which will have to be considered in this batch of cases. Under the 1939 Motor Vehicles Act, Section 43 dealt with the special power to State Government to control road transport. Subsequently by virtue of the State amendment Section 43A was introduced. In this State Section 43A was introduced by Act 35/71 with effect from 5-10-1971. Similar amendment was also made in the Madras State as early as 1954. I perusal of Section 43 indicates that the State Government was given the power to issue directions both prospectively and retrospectively to the State Transport Authority regarding the fixing of fares and freights and certain other prohibitions. Under Sub-section (1A) the fixing of fares and freights can also include taxes payable. Under Sub-section (2) the power was given for people to make representations for cancellation or variation of the notification on various grounds. Under Sub-section (3) it was open to the State to cancel or vary the notification. u/s 43A Government was empowered to issue such orders and directions of a general character as it may consider necessary in respect of any matter relating to road transport to the State Transport Authority or the Regional Transport Authority. Under the new Act Section 67 corresponds to Section 43 of the old Act. It is significant to remember that in the present Section 67, Clauses 43(1)(iii), 43(2) and 43(3) are omitted and the present Section 67(1) and (2) corresponds to old Section 43(1) and Sub section 1(A). The power to issue directions retrospectively is taken away. The present Section 67(1) as it reads gives only power to issue directions which will have prospective effect only to the State Transport Authority and the Regional Transport Authority. Section 67(1)(i) is very significant. It reads as follows;

"Regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages."

The ambit of the directions that can be given u/s 67(1) is limited.

6. The main question in this batch of writ petitions is whether the State Government is entitled to issue S.R.O. No. 364/94 in its entirety under the guise of exercising powers u/s 67(1)(i).

7. It should be remembered that under the Motor Vehicles Act, Section 72 deals with grant of stage carriage permits. Under Subsection (2) the Regional Transport Authority can grant the permit subject to any rules that may be made under the Act and attach to the permit any one or more of the conditions enumerated in that sub-section. It is the contention of the petitioners that in addition to the conditions that are attached to the permits as per Section 72(2) new and additional conditions are sought to be imposed by reason of paragraph F

of the notification. Clause (xx) of Sub-section (2) of Section 72 stipulates that any specified bus station or shelter maintained by Government or a local authority shall be used and that any specified rent or fee shall be paid for such use. Clause (xxi) mentions that the conditions of the permit shall not be departed from, save with the approval of the Regional Transport Authority. Clause (xxii) stipulates that the Regional Transport Authority may, after giving notice of not less than one month, vary the conditions of the permit or attach to the permit further conditions. Clause (xxiv) contemplates that any other conditions which may be prescribed may be added, which means that those conditions should be prescribed as contemplated by the Act and the Rules. By issuing a notification the State Government is not entitled to prescribe any conditions. The issuing of a notification u/s 67(1) is considered to be in administrative or executive function. It should also be remembered that u/s 84 there are certain general conditions which go with every permit.

8. When we come to the Kerala Pan-chayats Act, 1960 we find that Section 91 contemplates the Panchayat providing public landing places, halting places and cart-stands for various types of animals and vehicles including Motor Vehicles. It is also entitled to levy fees as per rules. Under Clause (b) where any such place or stand has been provided, it can prohibit the use of any other places for such purpose. Thus providing cart-stands, landing places or halting places by private operators is not legally possible. Section 92 provides for only cart-stands being opened by private persons, subject to the licence. There is a significant difference in the language of Section 91 and Section 92. While Section 91(a) includes landing places and halting places for Motor Vehicles Section 92 does not contemplate private halting place for motor vehicles. The Kerala Panchayats (Landing Places, Halting Places and Cart Stands) Rules, 1964 stipulates the various rules which govern the cart-stands halting places and landing places. Under Rule 3 the Panchayat has to invite objections before providing a public landing place or halting place or cart-stand. The objections received from the public will have to be considered. Then it should be submitted to the Deputy Director under Rule 5. In the case of stand or a public halting place of motor vehicles, the Panchayat shall forward the proposal with the objections received to the Deputy Director and under Rule 6 the Deputy Director is compelled to obtain the previous sanction of the Collector and the Collector before giving sanction shall consult the Regional Transport Authority and obtain his recommendations. Rule 10 prescribes the fees to be charged etc. Rule 8 prohibits any other place being used as halting place or landing place where the Panchayat has provided a public landing place or halting place. The proviso to Rule 8 gives exemption to motor vehicles which are not stage carriages. Explanation to Rule 8 is also significant.

9. Bearing in mind the above statutory provisions I shall now consider the various arguments advanced by the learned counsel for both parties. It is contended by the learned advocates for the petitioners that the directions which can be issued u/s 67(1)(i) are confined to revision of fares and freights and no

other conditions can be imposed by a notification issued u/s 67(1). The nature of the directions given under this provision and its corresponding provision under the old Act was the subject matter of a Constitutional Bench decision of the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, . There the Supreme Court dealing with certain directions issued u/s 43A, observed in paragraph 18 as follows:

"Therefore, it seems to us that on a fair and reasonable construction of Section 43A, it ought to be held that the said section authorises the State Government to issue orders and directions of a general character only in respect of administrative matters which fall to be dealt with by the State Transport Authority or Regional Transport Authority under the relevant provisions of the Act in their administrative capacity."

In paragraph 19 the Supreme Court observed as follows;

"In interpreting Section 43A, we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi judicial function the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State."

The Court further observed in the same paragraph as follows;

"If the exercise of discretion conferred on a quasi judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunals in dealing with the said matters. The scope of the jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement, that these provisions do not contravene the fundamental rights guaranteed by the Constitution, But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders. This position is so well established that we are reluctant to hold that in enacting Section 43A the Madras Legislature intended to confer power on the State Government to invade the domain of the exercise of judicial power. In fact, such had been the intention of the Madras Legislature and had been the true effect of the provisions of Section 43 A.;S. 43A itself would amount to an unreasonable contravention of fundamental rights of citizens and may have to be struck down as Unconstitutional. That is why the

Madras High Court in dealing with the validity of Section 43A had expressly observed that what Section 43A purported to do was to clothe the Government with authority to issue directions of an administrative character and nothing more."

10. Now by reason of S.R.O. No. 364/94 the Regional Transport Authority is not issuing permits to various operators for the express services on the pretext/that they have not complied with the conditions in paragraph F of the notification.

11. It is also argued that the State Government has enhanced the tax with effect from 1-4-1994 and it collected the enhanced tax of Rs. 350/- per seat for fast passenger and limited stop fast passenger services and still it is not allowing them to operate fast passengers and express services, by reason of the notification SRO. No. 364/94. It is also argued by Mr. Gopalakrishna Menon that paragraph F of the notification is beyond the purview of Section 67(1) and the conditions imposed are unworkable and impossible of compliance. He also contends that by reason of this notification additional conditions over and above those prescribed u/s 72 are sought to be imposed. He also contends that by virtue of this notification the State is interfering with the quasi judicial functions of the Regional Transport Authority and the State Transport Authority. There is much force in this argument.

12. Smt. Sumathi Dandapani contends that as far as her clients are concerned, they have permits for express services valid till 1996. Now by virtue of this notification the additional conditions are being attached. Under Clause (xx) of Section 72 it is the bounden duty of the private operators to utilise the bus stand facilities provided by the local bodies and the Government. Under the law they are not entitled to establish their own private bus stands or garages with the facilities as mentioned in paragraph F(iii) of the notification. It would be an offence on the part of the private operators if they built their own private bus stands and provided these facilities. She further contends that it is the exclusive privilege of the Regional Transport Authority to alter the conditions of the permit or vary the conditions of the permit. Now by virtue of this notification the Government is trying to alter the conditions subject to which permits have been granted. ,She relies upon the decision in J.C. Roadways Vs. Pandiyan Roadways Corporation Ltd. and Another, which clearly lays down that the executive instructions which can be issued u/s 43A of the Motor Vehicles Act cannot be issued to control the discretionary jurisdiction of the tribunals. She also contends that Rule 207 of the Kerala Motor Vehicles Rules clearly stipulates that where a local authority has provided and maintains a public stand for motor vehicles with facilities for drinking water supply, lighting, latrine and waiting sheds for passengers and convenient parking places which are approved by the Regional Transport Authority, every public service-vehicle shall make use of that stand. The rule also contemplates that the Regional Transport Authority may revoke the permission or the approval if necessary conveniences are not provided. By virtue of the notification the petitioners are now called upon to build their own separate

bus stands or garages with all the facilities stipulated in the notification under Clause (iii) of paragraph F. That would be in violation of the existing law. It would be both in contravention of Rule 207 as well as the provisions of the Panchayats Act. The petitioners would render themselves liable for prosecution if they violated the existing rules by constructing their own bus stands. Advocate Mr. K. V. Gopinathan Nair supplements the arguments of Smt. Sumathi Dandapani by referring to Rule 344. According to him, Rule 344 contemplates that a private operator can start his vehicle only from the prescribed bus stand. He cannot start from his own bus stand or station. Under the proviso to the rule such a privilege is given only to the vehicles of the K.S.R.T.C. He further contends that construction of private bus stand by each operator would be in direct violation of Section 91 of the Kerala Panchayats Act and the Rules thereunder. The State by issuing directions u/s 67(1) cannot ask the private operators to commit an offence or violate the law and render themselves liable for penal action and prosecution.

13. In this batch of writ petitions C, M .P. No. 16310/94 is filed in O.P. No. 5657/94 as an impleading petition by the Consumer Association of Palai. Advocate Mr. K. Ramachandran appearing for the petitioner contends that he fully supports the arguments of the petitioners to the effect that the notification is beyond the powers of Section 67(1). If the additional conditions sought to be imposed in the notification are to be implemented the State Government will have to frame rules as contemplated u/s 96. Mr. Ramachandran contends that the present writ petitions are against the interests of the general public. The private operators want to operate only profitable and remunerative routes and services. They want to operate fast passenger services and express services to have the advantage of charging higher fares and they wanted to avoid granting concession to the large student population of the State. As the concessional fares are applicable only to ordinary services and ordinary limited stop services the petitioners are anxious to run only fast passenger services and express services. If relief is to be granted to the petitioners in those petitions, the entire notification should be quashed. He contends that in his view, considering the general interest of the public and the student community, there should be no fast passenger services at all and all buses should be ordinary passenger services and ordinary limited stop passenger services. He contends that under the scheme of the Motor Vehicles Act what is contemplated is only ordinary passenger services and so many different types of services are not at all visualized.

14. The second argument of Mr. Rama-chandran that all services should only be ordinary passenger services or ordinary passenger services with limited stop cannot be accepted by this Court because this is not the forum to decide what type of service should be operated. If he has any grievance regarding the creation of fast passenger services, express services, super express services and deluxe express services etc. he should agitate the matter with the State Government.

15. Advocate Mr. Chandramohan Das appearing for some other petitioners contends that the notification is without jurisdiction and it is mala fide exercise of powers in view of the earlier history of litigation between the private operators and the K.S.R.T.C. He contends that the restrictions imposed violate Article 19(1)(g) and Article 14. The discrimination is sought to be brought about between the K.S.R.T.C. and the private operators. By imposing unworkable conditions as in paragraph F the State is trying to force the private operators to surrender their permits for fast passenger services and express services. He points out that apart from O.P. No. 731 of 1993 there is a large batch of about 45 original petitions filed by the State now pending in this Court. Because this Court refused to grant stay of operation of the State Transport Appellate Tribunal's judgment this particular notification has been issued. His last argument is that even if the notification is valid it can have only prospective operation and persons who have obtained permits for running fast passenger services or express services before 1-4-1994 cannot be prevented from operating their express services and fast passenger services. He contends that the mala fides of the State Government are manifest in this case. He relies upon the decision in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, to indicate that where the conditions imposed are so stringent and impossible of performance they are in violation of Article 19(1)(g). The Supreme Court in the decision in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, popularly known as Bank Nationalisation case, observed in paragraph 74 at page 601 as follows:

"Where restrictions imposed upon the carrying on of a business are so stringent that the business cannot in practice be carried on, the Court will regard the imposition of the restrictions as unreasonable."

The Court then dealt with the case law and quoted with approval the principles laid down in *Mohammad Yasin Vs. The Town Area Committee, Jalalabad* and *Another*, The dictum laid down by the Supreme Court in those two decisions aptly applies to the facts of our case.

16. The learned Government Pleader states that the notification was issued with good intentions and with a view to provide various conveniences to the long distance passengers. He claims that there is absolutely no mala fide intention in issuing the notification. As the private operators are charging very high rates for the fast passenger and express services as per the steep hike in fares given in Ext. P-1 they are bound to provide the facilities prescribed in paragraph F of the notification. They cannot complain against the advance reservation. Similarly they can not complain about their owning or providing separate bus stations with various facilities with retiring rooms, latrines and refreshment stalls because such facilities are now being provided by K.S.R.T.C. for its long distance passengers travelling by express services and super express services etc. He is not able to meet the argument as to whether the notification would contravene Clauses (xx), (xxi), (xxii) and (xxiv) of Section 72(2) and Sections 91 and 92 and rules thereunder, as per Kerala Panchayats Act.

17. If we read S.R.O. No. 364/94 dated 28-3-1994 we find that under the guise of issuing directions u/s 67(1) which is of limited scope, the State has embarked upon a whole-sale change in the fares prescribed for different classes of services, speed limits provided for various services and it wanted the permit holders to comply with Clauses (i) to (v) of paragraph F. One is unable to understand how and under what statutory power the State is authorised to issue the various directions contained in paragraph F of the notification. The State has not indicated in the notification; except stating increase in cost of fuel and tyres; on what basis the steep hike in fares is given from the fares indicated in notification issued earlier in 1992 as S.R.O. No. 1048/92. What prompted the authorities to increase the speed limits for different types of services is also not clear. Reading the provisions of Section 67 and the other provisions of the Motor Vehicles Act and the Panchayats Act discussed earlier, I am clearly of the view that the conditions imposed in paragraph F are not only impossible of compliance for private operators but they also contravene the existing law as indicated above. Virtually the State is forcing the private operators to contravene the law particularly Section 72(2) of M.V. Act and Section 91 of the Panchayats Act. The restrictions imposed are so stringent that they are incapable of performance and the law prohibits them from complying with those conditions. I am fully convinced that the restrictions are unreasonable and amount to violation of Article 19(1)(g). In this connection we have to bear in mind the principles enunciated by the Supreme Court in *Mithilesh Garg, Vs. Union of India and others etc. etc.*,). In that case the Supreme Court held that the new Motor Vehicles Act provides liberal policy for the grant of permits to those who intend to enter the motor transport business and that the provisions of the Act are in conformity with Article 19(1)(g), and the policies of the new Motor Vehicles Act is one of the liberalisation with regard to grant of permits. One cannot understand the rationale of the notification SRO No. 364/94, which has the effect of restricting the grant of permits for stage carriage permit holders who want to operate express and fast passenger services. The notification is against the liberal policy of the new Motor Vehicles Act.

18. It should also be remembered that taking the historical perspective the State seems to be anxious to reserve the fast passenger services, express services and super express services etc. as an exclusive privilege for the K.S.R.T.C. If it wants to do it; it has to do it through proper legislation and subordinate legislation, viz., by amending rules. By exercising its powers u/s (2) it cannot achieve that object. It looks as if the State having failed in preventing the private operation from running express services and fast passenger services by reason of the judgment of the High Court in O. P. No. 10375/88 dated 9-8-1989 it embarked upon vindictive methods to achieve the same objective of excluding the private operators. When the State Transport Appellate Tribunal allowed the various appeals of the permit holders the State challenged the decision by filing numerous writ petitions, viz., O. P. No. 731/93 and connected original petitions. It also introduced new concept of a "fleet owner" as a person or organisation

owning 150 stage carriage services. That is also introduced by way of a notification. Having failed to obtain stay orders from this Court it has come forward with the present notification, S.R.O. No. 364/94. I hold that the notification imposes unreasonable restrictions and violates Article 19(1)(g). I also hold that the State is guilty of discrimination against the private operators and giving a favoured treatment to the K.S.R.T.C. by imposing onerous conditions in S.R.O. No. 364/94. Thus S.R.O. No. 364/94 violates Article 14. It should be remembered that in the decision in Mithilesh Garg, Vs. Union of India and others etc. etc., the Court clearly pointed out that the object of the new Motor Vehicles Act is to encourage healthy competition and to eliminate corruption, and to provide better services for the general public. By shutting out the private operators from running the fast passenger and express services the State is violating the policy of the New Vehicles Act. The notification has to be struck down.

19. The further question that arises in this batch of writ petitions is whether the entire notification has to be quashed or whether the onerous conditions in paragraph F alone are to be quashed. If the onerous conditions in paragraph F alone are quashed it would be giving an undeserved or unintended benefit to the private operators who are permitted to run fast passenger services and express services. As rightly contended by the Government Pleader and Mr. K. Ramachandran, appearing for the Consumer Association, I feel, the entire notification has to be quashed. Paragraph F of the notification alone cannot be quashed leaving in force the other paragraphs of the notification. The notification has to be considered as one comprehensive unit with interdependent clauses. The advantage of higher fares is directly linked to the responsibility of the permit holder to provide better facilities and conveniences as per paragraph F. The various paragraphs are not severable. The petitioners are not entitled to the right of enforcing only the favourable parts and reject the burden some parts of the notification. In fact, in O.P. No. 5745/1994 the wording of the second prayer is to quash Ext. P10 as ultra vires, but at the same time in the third prayer the petitioner wanted a writ of mandamus to allow the petitioner to operate the service as fast passenger service by collecting the higher fares as prescribed in Ext. P10, that is S.R.O. No. 364/94. Obviously the last portion of this prayer is inconsistent with the second prayer. I am of the view that the entire notification has to be quashed and the position as prevailing in S.R.O. No. 1048/92 dated 22-8-1992 has to be revived. It is true that S.R.O. No. 364/94 in terms superceded S.R.O. No. 1048/92 dated 22-8-1992. Once S.R.O. No. 364/94 is quashed S.R.O. No. 1048/92 is automatically revived

20. In the result, writ petitions are to be allowed and notification S.R.O. No. 364/94 has to be quashed in its entirety. The position prevailing under the earlier notification S.R.O. No. 1048/92 dated 22-8-1992 is revived.

In view of the conclusions arrived at by this Court, the following is the result with regard to the various writ petitions.

O. P. Nos. 5657/94, 5761/94, 5934/94, 6160/94, 8195/94, 8875/94 and 9017/94 are allowed. In all these original petitions, Ext. P1 notification S.R.O. No. 364/94 is quashed.

O. P. Nos. 5747/94, 5919/94, 5959/94, 6066/94 and 6179/94 are allowed. Ext. P1 notification is quashed.

O.P. Nos. 5745/94 and 5763/94 are allowed in part. Ext. P10 notification is quashed. O.P. No. 5888/94 is allowed in part. Ext. P4 notification is quashed., O. P. No. 5907/94 is allowed in part. Ext. P1 notification and Ext. P2 notice dated 12-4-1994 are quashed. O.P. No. 5911/94 is allowed in part. Ext. P3 notification isquashed. O.P. No. 5973/94 is allowed in part. Ext. P1 notification is quashed.

O.P. No. 5975/94 is allowed in part. Ext. P1 notification and Exts. P2 and P3 notices are qaushed. O.P. No. 6030/94 is allowed in part. Ext. P2 notification is quashed. O.P. No. 6092/94 is allowed in part. Ext. PI notification and Exts. P2 and P3 notices are quashed.

O.P. Nos. 5963/94, 5965/94, 5972/94, 6089/94, 11632/94 and 13921/94 are allowed in part. Ext. P1 notification in each one of the writ petitions is quashed.

O.P. No. 6083/94 is allowed in part. Ext. P1 notification is quashed. O.P. 8817/94 is allowed in part. Ext. PI notification and Ext. P2 notice dated 17-6-1994 are quashed. In Ext. P2 (a) Clause (c) is deleted.

O.P. No. 5773/94 is allowed in part. Ext. P1 notification is quashed. O.P. No. 6147/94 is allowed in part. Ext. P3 notification is quashed. O.P. No. 6163/94 is allowed. Ext. P3 notification and Exts. P4 and P5 notices are quashed. O.P. No. 6399/94 is allowed. Ext. P2 notification, Ext. P3 charge memo and Ext. P4 notice are quashed. O.P. No. 6394/94 is allowed in part. Ext. P6 notification and Ext. P9 notice are quashed. In view of the notification being quashed, there is no necessity for quashing Ext. P10.

O.P. No. 5982/94 is allowed in part. Ext. P6 notification is quashed. O.P. No. 5855/94 is allowed in part. Ext. P4 notification and Ext. P5 notice dated 12-4-1994 are quashed. O.P. No. 5857/94 is allowed in part. Ext. P7 notification and Ext. P8 notice dated 13-4-1994 are quashed. O.P. No. 5863/94 is allowed in part. Ext. P5 notification and Ext. P4 letter dated 21-4-1994 from R2 are quashed. O.P. No. 5983/ 94 is allowed in part. Ext. P2 notification and Ext. P3 notice are quashed. O.P. No. 7226/ 94 is allowed in part. Ext. P6 notification and Ext. P5 check report dated 13-4-1994 are quashed.

O.P. No. 5964/94 is allowed in part. Ext. P1 notification is quashed. O.P. No. 5988/94 is allowed. Ext. P3 notification is quashed. O.P. No. 5754/94 is allowed. Ext. P1 notification and Ext. P2 notice dated 12-4-1994 are quashed.

In all these original petitions each party is directed to bear its own costs.