

(1964) 12 AP CK 0006
In the Andhra Pradesh High Court
Case No : Writ Petition No. 351 of 1964

Shaik Ali and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 16-12-1964

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1957 — Rule 10, 11, 4, 8
Motor Vehicles (Amendment) Act, 1956 — Section 45, 68C, 68D, 68E

Citation : AIR 1966 AP 42

Hon'ble Judges : Gopal Rao Ekbote, J;Basi Reddy, J

Bench : Division Bench

Advocate : P. Babulu Reddy, E.P.K. Sikhamani and M.V. Ramana Reddy, for the Appellant; S. Ramachandra Reddy, for P. Ramachandra Reddy, 3rd Govt. Pleader and P.R. Ramachandra Rao, for the Respondent

Final Decision : Allowed

Judgement

Basi Reddy, J.—This is a petition under Article 226 of the Constitution for the issue of a Writ of Certiorari to quash a notification issued by the Government of Andhra Pradesh (G. O. Ms. No. 296, Home (Transport-IV), dated 12th February, 1963 approving a scheme of nationalisation of road transport in respect of the route Hyderabad to Kalvakurthy, and also to quash the order of the Regional Transport Authority, Mahabubnagar, dated 25th February, 1964 (in C. No. 11873/A2/63), whereby an application of the Andhra Pradesh State Road Transport Corporation (which will be, referred to as "the Corporation") for the issue of three stage carriage permits in respect of the notified route Hyderabad to Kalvakurthy, was granted and the existing permits of the three petitioners were cancelled.

2. The facts material for the purpose of this writ petition are as follows: The three petitioners are motor transport operators who had been plying their vehicles for a long time on the route -- Hyderabad to Kalvakurthy. While so, the Corporation, acting u/s 63-C of the Motor Vehicles Act, 1939 (hereinafter called

"the Act") published a draft Scheme prepared by it in the Andhra Pradesh Gazette under date 31st May, 1962, with a view to nationalising road transport on the route Hyderabad to Kalvakurthy and eliminating the existing private operators. The draft Scheme was in the following form:

SCHEME

Name of the route indicating its course Length of the route in miles No. of vehicles pro-posed to be operated on each route

Total No of trips each way to be performed daily on each route

Nature of Services

Min Max Min. Max.

1 2 3 (a) 3 (b) 4 (a) 4 (b) 5

Hyderabad to Kalva-kurthy via. Pahadi Shariff, Kadhal and Amangal.

53-6 3 6 3 6

Ordinary services to the complete exclusion of other persons except those operating stage carriage service on the following route on the sectors specified against each route

(1) Chanaiuar to Pa-hadishariff Chandraingutta to Pa-badishariff.

(2) State Talkies to Nakadtamitappalli State Talkies to Pahadi-shariff

3. It will be noticed that the Scheme indicated the minimum and maximum number of vehicles proposed to be operated on the route as also the total number of minimum and maximum daily trips each way. The minimum number of vehicles was shown as 3 and the maximum as 6; likewise the minimum number of daily trips each way was shown as 3 and the maximum number as 6.

4. To this Scheme the three petitioners tiled objections through their counsel before the State Government, as required by Sub-section (1) of Section 68-D of the Act. In view of the points taken in this writ petition, it is necessary to refer to the relevant objections taken by the petitioners. Leaving aside the objections relating to the jurisdiction and bona fides of the Corporation in formulating the Scheme with which we are not concerned in this writ petition, objections Nos. 5 and 6 which were directed against the number of vehicles proposed to be run by the Corporation, ran as follows:

"5. The Andhra Pradesh State Road Transport Corporation has not shown how if they run three buses on the route instead of the objectors running four buses it would amount to providing efficient, adequate, economical and properly coordinated road transport service. So far as public are concerned it would not give them any benefit.

6. When the objectors are plying four vehicles the Road Transport Authority

found the need to increase one more permit. Now the Andhra Pradesh State Road Transport Corporation wants to run only three vehicles and it is not known how it would serve the public better. On the other hand public would be at a disadvantage. Unless in some manner the Andhra Pradesh State Road Transport Corporation convinces the Government that the plying of the three vehicles by them instead of me objectors would advance the interests of the travelling public, it cannot be said that the requirements of Section 68-C are satisfied."

It is to be noted that the complaint of the petitioners was that the requirements of Section 68-C of the Act had not been satisfied, but there was no suggestion that the draft Scheme was not in conformity with Rule 4 of the Andhra Pradesh Motor Vehicles Rules, 1957 (hereinafter referred to as "the Rules"). We may point out that the statement to the contrary contained in paragraph 2 of the affidavit filed by the 1st petitioner in support of this writ petition, is not quite correct. The statement is:

"It was further objected that the proposed scheme is illegal as it was not in conformity with Section 68-C and Rule 4 of the Rules framed under Chapter IV-A of the Act."

(5) Thereafter on 28th July, 1962, the representations of the objectors through their counsel and of the Corporation through their representatives were heard by the Minister for Labour and Transport, as required by Section 68-D (2) of the Act. After considering the representations, the Minister passed orders on 2nd February, 1963, overruling all the objections and approving the Scheme with certain minor modifications.

(6) It is important to note that with regard to the objection as to the adequacy of the service as proposed in the draft scheme, the Minister was satisfied that since the vehicles of the Corporation have larger seating capacity, the proposed scheme whereby a minimum of three buses would do three daily trips each way, would not result in the curtailment of existing facilities.

7. The Scheme as approved, was published by the Government in the Andhra Pradesh Gazette as G. O. Ms. No. 296, Home (Transport-IV), on 13th February 1963, as envisaged by Sub-section (3) of Section 68-D of the Act.

8. Thereafter, in June 1963, in pursuance of the approved Scheme, the Corporation applied for three permits to the Regional Transport Authority, Mahbubnagar. The Regional Transport Authority appears to have issued notices to the petitioners and the Corporation in accordance with Rule 11 of the Rules, intimating to them that the question of granting permits to the Corporation and cancelling the permits of the petitioners would be considered at its meeting to be held on 19th July, 1963. It would appear that those notices were returned unserved on the petitioners. However, on 19th July, 1963, the matter was deferred and a report was called for from the Executive Engineer, Roads Division, Hyderabad, as to the condition of the road between Hyderabad and Kalvakurthy. For nearly seven months thereafter, nothing appears to have been done; but

apparently, on a reminder by the State Government, the Regional Transport Authority, Mahbubnagar, woke up at its meeting held on 25th February, 1964, considered the pending application of the Corporation for the issue of permits, granted three permits as applied for, and by the same order, cancelled the permits of the petitioners. This was done without issuing "due notice" to the petitioners, as required by Rule 11 of the Rules. The order passed by the Regional Transport Authority was served on the petitioners on 4th March, 1964 and they were asked to stop plying their buses and surrender their permits by 7th March, 1964. The Corporation appears to have commenced operating the service on the route in question on the morning of 8th March, 1964, from both the termini.

9. On 5th March, 1964, the petitioners filed this writ petition challenging the validity of the Scheme and the legality of the procedure followed by the Regional Transport Authority, Mahbubnagar, in cancelling the petitioners' permits and granting permits to the Corporation. A rule nisi was issued by this Court on 6th March, 1964 and on 9th March, 1964, an interim order was passed suspending the order of cancellation, and permitting the petitioners to ply their buses along with the buses which had been put on the route by the Corporation.

10. This arrangement continued upto 17th June, 1964, on which date by another order of this Court, the Corporation was directed to withdraw its buses during the pendency of the writ petition and the petitioners were ordered to deposit with the Regional Transport Officer, Mahabubnagar, at the rate of Rs. 100 per day from 22nd June, 1964 onwards till the disposal of the writ petition. There is a further direction in the order that if the petitioners ultimately fail in the writ petition, the amounts deposited by them, should be made over to the Corporation; hut on the other hand, if the petitioners succeed in the writ petition, the amounts deposited by them, should be refunded to them by the Regional Transport Officer. So the present position is that the petitioners have been plying their vehicles on the route in question, while the Corporation has withdrawn its vehicles.

11. Now we turn to the contentious advanced by the learned advocate for the petitioners. The first contention was that the Scheme itself is invalid because, contrary to the provisions of Section 68-C of the Act and Rule 4 of the Rules, it specifies the minimum and maximum number of vehicles that would be put on the route and of the daily trips they would make. It was maintained that what the section and the Rule contemplate, is the specification of the precise number of vehicles and the exact number of trips.

12. The second contention was that even if the Scheme be held to be valid, in giving effect to it, the Regional Transport Authority, Mahbubnagar, has not followed the procedure prescribed by the Rules and consequently, the order of the Regional Transport Authority cancelling the petitioners' permits and granting permits to the Corporation, is bad and unsustainable.

13. As regards the first contention, the question for consideration is firstly,

whether the fixation of the minimum and maximum number of vehicles and trips, offends Section 68-C of the Act, and secondly, whether such fixation contravenes Rule 4 of the Rules. Section 68-C of the Act enjoins that the Scheme prepared and published by a State transport undertaking, should contain particulars of the nature of the services proposed to be rendered and such other particulars respecting thereto, as may be prescribed by the Rules. These particulars are all required to be set out in the Scheme so that transport operators running vehicles on the route, might know that they would be affected by the proposed Scheme and might, if they think fit, prefer objections u/s 68-D, and further, to enable the operators and others affected by the Scheme, as for instance, the members of the travelling public, to formulate their objections and point out the defects and deficiencies in the Scheme, so that the State Government might consider them, before deciding whether to approve, modify or cancel the Scheme.

Now, does the fixing of the minimum and maximum number of vehicles and trips, militate against effective objections being put forward and effective representations being made against the Scheme? We are of opinion that there would be no impediment in the way of the Operators or members of the public pointing out the loop-holes in the Scheme merely because, instead of specifying the exact number of vehicles and trips, the minimum and maximum number are shown. The present case itself furnishes a striking illustration of the untenability of the contention that the mere prescription of the minima and maxima, would render it difficult for affected parties to make effective representations or impede an objective determination by the approving authority of the adequacy or otherwise of the proposed service.

As noted earlier, in the objections filed by the operators and in the oral representation made by them through their counsel, it was pointedly brought to the notice of the Minister concerned that the three buses which were proposed to be put on the route by the Corporation, would not meet the needs of the public as against the four buses which the objectors had been running all along. This objection was considered and met by the Minister by pointing out with reference to the data placed before him by the Corporation, that no inconvenience would be caused to the public as the seating capacity of the vehicles operated by the Corporation is much larger than that of the petitioners' buses. It would appear that the seating capacity of each of the buses of the Corporation is 19 and the total number of seats in the three buses is 147, whereas the number of seats in each of the four buses operated by the petitioners is 36 and the total number of seats is only 144. That was apparently the reason why the Minister was of the view that the minimum number of buses viz., three, which were proposed to be run on the route and the minimum number of three daily trips each way, would satisfy the normal needs of the travelling public, and, if the public interest so required, the number of buses and trips could be increased up to six. It is clear, therefore, that under the proposed Scheme, there was hardly any possibility of the interests of the travelling public being adversely affected by reason of the inadequacy or inefficiency of the proposed service. It is also pertinent to point

out that to the draft Scheme, no one other than the three petitioners, that is to say, no member of the public and no society or body interested in public welfare, chose to prefer objections.

14. The further contention on behalf of the petitioners that the fixation of a minimum and maximum number of vehicles and trips is in contravention of Rule 4 of the Rules, is equally untenable. Rule 4 is in these terms:

"4. The Scheme or approved scheme to be published in the Official Gazette as required u/s 68-C or 68-D as the case may be, shall contain the following particulars;

(i) Name of the routes indicating its course and mileage;

(ii) the number of vehicles proposed to be operated on each route;

(iii) the total number of trips to be performed daily on each route; and

(iv) the nature of services." It will be seen that what the Rule requires is that the number of vehicles proposed to be operated and the total number of trips to be performed daily, should be specified in the Scheme. It does not in terms prohibit the specification of the minimum and the maximum in each case nor does it expressly authorize such fixation. By the mere fact that the maximum and the minimum number are shown, it does not follow that the particulars required by the Rule are not furnished viz., the number of vehicles or the total number of daily trips. Instead of one number being shown, two numbers are shown -- the minimum number is shown as 3 and the maximum number as 6. There is thus no breach of the letter of: the Rule.

15. The next question is: Is there a violation of the spirit of the Rule? In other words, by reason of the fixation of the minimum and maximum number of buses and trips, is the purpose underlying the Rule defeated or thwarted? The particulars prescribed in Rule 4 are the particulars referred to in Section 68-C of the Act. The very purpose of nationalisation of transport services is, as proclaimed by Section 68-C of the Act, to provide for "an efficient, adequate, economical and properly coordinated road transport service", and to achieve that object, the State transport undertaking should form an opinion that in the public interest, a Scheme should be framed conferring a monopoly on the State transport undertaking in respect of road transport service to the partial or complete exclusion of private operators. That is the underlying object of a Scheme proposed u/s 68-C and ultimately approved u/s 68-D of the Act. Before the proposed Scheme is approved by the State Government, any person affected by it, is given an opportunity of being heard by filing objections and by making representations either in person or through a representative.

It seems to us that the argument that because a given scheme fixes a minimum and maximum number and does not specify one, precise number of vehicles or trips, the terms of Rule 4 are violated, is hyper-technical and has no relation to the realities of the situation. It would certainly not be difficult for a bona fide

objector to show that the minimum number of vehicles and the minimum number of trips proposed by the Scheme do not adequately meet the normal needs of the travelling public. In the present case, an attempt was made by the petitioners to convince the Minister who heard the objections that the fixation of the minimum as 8 would not be adequate; but the Minister, after giving careful thought to this objection, overruled it, as he was satisfied that although the minimum number was 3 as against 4 vehicles that were being run by the petitioners, yet having regard to the larger seating capacity of the buses to be put on the road by the Corporation, the interests of the travelling public would not in the least be affected by the mere reduction in the number. It is worthy of note that no objection was taken before the Minister regarding the masima shown in the draft Scheme. We are therefore of the view that the impugned Scheme cannot be assailed on the ground that it does not satisfy the requirements of Rule 4 of the Rules.

In our opinion, the fixation of a minimum and maximum number of vehicles and trips does not per se vitiate a Scheme. To have that effect, something more must be shown viz., that the minimum fixed by the Scheme does not provide adequate or efficient service, having regard to the normal needs of the travelling public. A scheme has to be tested by the criterion laid down in Section 68-C of the Act and measured by the yardstick formulated therein, viz, whether it is conducive to an efficient, adequate, economical and properly coordinated road transport service. If the minimum number fixed satisfies the normal requirements in a given case, the fact that the maximum number is also fixed, does not affect the validity of a scheme because such fixation of the maximum number of vehicles and trips, would ensure more flexibility and adjustability in meeting the fluctuating needs of the travelling public. The question is not to be treated as an arithmetical problem or as an exercise in semantics. In ultimate analysis the requirement as to particulars and the provision for filing objections and making representations, are not intended to allay the imaginary fears or to dispel the unreasonable doubts of disgruntled operators as to the efficacy of a given Scheme, but to enable affected parties to lodge genuine objections and make bona fide representations with a view to showing that the Scheme as proposed does not in its entirety or in certain aspects subserve the public interest, and should therefore be dropped or modified. That, in our view, is the true function of the quasi judicial process postulated by the group of provisions contained in Section 68-C and Rule 4 on the one side and Section 68-D and Rules 8 and 10 on the other.

16. If was, however, maintained by the learned advocate for the petitioners that in C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, the Supreme Court has indicated, if it has not decided, that a Scheme which prescribes minima and maxima offends Rule 4 of the Rules. It was further argued that such fixation would result in a circumvention of the procedure prescribed by Section 68-C and Section 68-D of the Act and would have the same effect as Rule 5 of the Rules had, and which Rule was struck down by the Supreme Court

in Dosa Satyanarayanamurthy etc. Vs. The Andhra Pradesh State Road Transport Corporation, as being repugnant to Section 68-E of the Act, Section 68-E reads:

""Any scheme published under Sub-section (8) of Section 68-D may at any time be cancelled or modified by the State transport undertaking and the procedure laid down in Section 68-D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be modified as if the modification proposed were a separate scheme."

17. In AIR 1964 SC 662 the validity of three schemes framed under Chapter IV-A of the Act, nationalising motor transport in certain areas in the Kurnool District, was challenged on various grounds by the existing motor transport operators, but the Supreme Court struck down the Scheme on the sole ground that the selection of the western part of the Kurnool District for nationalisation of road transport was not made by the Corporation in the exercise of its independent judgment, as required by the Section 68-C of the Act, but in propounding the Schemes, the Corporation had acted as a cat's-paw of the then Chief Minister of Andhra Pradesh. After referring to the contentions, pro and contra, in the light of the available material, Rajagopala Ayyangar J., speaking for the Court, observed as follows: (at page 973):

"On the evidence placed in the case we me satisfied that it was as a result of the conference of April 1962, and in order to give effect to the wishes of the Chief Minister expressed there, that the Schemes now impugned were formulated by the Corporation." Again (at page 974), the learned Judge said:

"Our conclusion therefore is that the impugned schemes are vitiated by the fact that they were not in conformity with the requirements of Section 68-C".

18. As regards the other contentions raised hy the appellants, the learned Judge observed as follows: (at page 974):

"In the view that we take that the Schemes have to be set aside as not in conformity with Section 68-C of the Act, the other objections raised do not require consideration but in view, however, of the arguments addressed to us on them, we shall briefly deal with them." One of such objections was that the Schemes were not in conformity with Section 68-C of the Act as they did not specify the actual number of vehicles and the number of daily trips but gave the minimum number and the maximum number.

19. Another contention raised before their Lordships was that the fixation of maxima and minima, also contravened Rule 4 of the Rules. Their Lordships did not decide this larger question and left it open. But what they did was, adopting the test adumbrated by the then Advocate-General, who appeared for the State of Andhra Pradesh, they proceeded to test the fixation of minimum and maximum in each ease to see whether the gap between them was so wide as to amount to a contravention of Rule 4. This is what Rajagopala Ayyangar. J. said (at page 975 of the report):

"The learned fudges of the High Court have repelled this contention on the ground of the analogy furnished by Sections 46 and 48 of the Act under which applications for State Carriage permits by private operators and the permits granted to them are required to state the minimum and maximum number of daily services, proposed to be provided in relation to each route or area, was an indication that a scheme specifying the maxima and minima of the number of buses and services was in conformity with and did not contravene Rule 4. The learned Advocate-General adopted the same line of argument and submitted that the language of Rule 4 did not in terms prohibit the specification of a minimum and maximum and that Rule 5 which this Court struck down as being repugnant to Section 68-E was attracted only when the maxima or minima set out in the scheme was departed from. He, however, conceded that the gap between the minimum and the maximum specified in a scheme might be so wide as to render the same a contradiction of Rule 4 but he submitted that the variations in the 3 schemes before us between Columns (4) and 4(a) and Columns 5 and 5(a) respectively were so slight as not to amount to a failure to fix the number of vehicles to be operated or the trips they would do in the routes.

In the case before us in view of the conclusion we have reached that some of the variations between the maxima and the minima in the number of vehicles proposed to be operated on each route are such, as adopting the test suggested by the learned Advocate-General himself to really contravene Rule 4, we have not thought it necessary to finally decide the larger question, whether the mere prescription of the maxima and minima, particularly for the reasons set out in the affidavit of the Assistant Secretary to the Transport Department, constitutes a violation of Section 68-E as also Rule 4 of the Motor Vehicles Rules, 1957 as to require the same to be struck down. We might, however, mention in passing that we are not much impressed by the argument based on Sections 46 and 48. It must be remembered that we are concerned with a requirement of Ch. IV-A and u/s 68-B of the Act, not only the provisions of that Chapter but the rules made thereunder are to have effect notwithstanding anything in Ch. IV in which Section 46 and Section 48 occur. This apart, the rule-making authority had the analogy of the provisions of Sections 46 and 48 before it, but yet chose not to adopt the same phraseology as was employed in these sections. Besides, as the provisions of Ch. IV-A made the rights of private operators to carry on business and are justified as a reasonable restriction on their rights in public interest, it might very well have been considered that a more precise indication should be afforded by the scheme to enable its adequacy to be tested by the quasi judicial procedure which has to be followed before the scheme becomes effective. However, as stated already there is no need to decide this matter finally in view of our conclusion that the scheme contravenes Rule 4, even on the test submitted by the Advocate-General. In saying this we have in mind routes 15, 16, 18 and 20 of Scheme No. 1 in which the variation in the number of vehicles is 1 to 3, 1 to 4 and 3 to 8 and similarly in Scheme No. 2 route No. 1 where the variation is 6 to 12 and in Scheme No. 3 route No. 1 the variation is 5 to 9. We

might mention that we have taken into account not merely the proportion but the variation in the number. We have set these out as merely illustrative and we have not thought it necessary to make an exhaustive list of all routes."

20. It was contended by the learned Government pleader appearing on behalf of the respondents that the very test propounded by the Advocate-General in that case, was not a sound one. He argued that the true test is whether a given number of vehicles or trips does or does not satisfy the criterion laid down in Section 68-C of the Act, viz., whether it is conducive to providing an efficient, adequate, economical and properly coordinated road transport service. In the absence of positive proof that a proposed Scheme does not meet the public interest in that regard, the margin between the minimum and the maximum number, does not by itself affect the validity of the Scheme. It seems to us that this submission is not without force and reflects a realistic approach to the problem without being bogged down by technicalities. If that be so, in the instant case, as noticed already, the Minister who heard the objections, was satisfied that the minimum number of vehicles and trips indicated in the draft Scheme fulfilled the requirement as to the adequacy and efficiency of the services in question. The operators did not then raise any objection on the score that the gap between the minima and maxima was so wide as to prejudice the public interest.

21. However even applying the test adopted by their Lordships of the Supreme Court in *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, we are satisfied that in the present case, the proportion and variation between 3 and 6, are not such as to amount to a negation of the provisions of Rule 4, which requires particulars as regards the number of vehicles proposed to be operated and the total number of trips to be performed daily in each route, to be given in a proposed Scheme u/s 68-C or in an approved Scheme u/s 68-D of the Act.

22. It was next contended that the prescription of a maximum and minimum, and not a precise number, would result in circumventing the operation of Section 68-E of the Act and would operate in the same way as Rule 5 of the Rules which was struck down by the Supreme Court as being repugnant to Section 68-E in the case of *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, . In our opinion, this contention is unsustainable as it proceeds on a misconception of the ratio decidendi of that decision. Rule 5, which has since been deleted, read thus:

"The State Transport undertaking may, at its discretion vary the frequency of services on any of the notified routes or within any notified area having regard to the needs of traffic during any period."

Dealing with the contention that Rule 5 was inconsistent with the provisions of Section 68-E of the Act and was therefore void, Subba Rao J., speaking for the Court, observed as follows (at page 92):

"The next contention is that Rule 5 framed by the State Government in exercise of the power conferred on it u/s 68 (1) is inconsistent with the provisions of Section 68-E of the Act and, therefore, is void. The schemes prepared by the State Transport Authority contain the following note: "The frequency of services on any of the notified routes or within any notified area shall, if necessary, be varied having regard to the traffic needs during any period."

Indeed the said note was practically a re-production of a note appended to Rule 5. The only question is whether Rule 5 and the note made pursuant therein come into conflict with Section 68-E of the Act. Section 68-E reads:

"Any Scheme published under Sub-section (3) of Section 68-D may at any time be cancelled or modified by the State Transport undertaking and this procedure laid down in Section 68-C and Section 68-D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be modified as if the modification proposed were a separate scheme."

The short question that arises is whether the variation of frequency of service by the State Transport undertaking amounts to a modification of a scheme within the meaning of Section 68 of the Act. The rule is not so innocuous as the learned Advocate-General of the Andhra Pradesh contends. Under that rule the State Transport Undertaking, having regard to the needs of the traffic during any period, may increase or decrease the number of trips of the existing buses or vary the frequency by increasing or decreasing the number of buses. This can be done without any reference to the public or without hearing any representations from them. This increase or decrease, as the case may be, can only be for the purpose of providing efficient, adequate, economical transport service in relation to a particular route within the meaning of Section 68-C. At the time the original schemes are proposed, the persons affected by them may file objections to the effect that the number of buses should be increased or decreased on a particular route from that proposed in the scheme. The Government may accept such suggestions and modify the schemes; but under this rule the authority may, without reference to the public or the Government, modify the schemes. Learned counsel contends that the note only provides for an emergency. But the rule and the note are comprehensive enough to take in not only an emergency but also a modification of the scheme for any period which may extend to any length of time. We are, therefore, definitely of opinion that the rule confers power on the State Transport undertaking to modify substantially the scheme in one respect, though that power can only be exercised u/s 68-E of the Act in the manner prescribed thereunder. This rule is void and, therefore, the said note was illegally inserted in the schemes."

23. It will be observed that Rule 5 authorised the State transport undertaking at its discretion to vary the frequency of the services on any of the notified routes or within any notified area, and this could be done either by increasing or reducing the number of existing trips of the buses or by increasing or decreasing the number of buses. In effect, the Rule empowered the State transport

undertaking to modify an approved Scheme without following the procedure laid down in Section 68-C and Section 68-D of the Act. The Rule therefore Hew in the face of the provisions of Section 68-E of the Act, which require the observance of the procedure laid down in Sections 68C and 68D as regards the publication of the Scheme with sufficient particulars and the giving of a reasonable opportunity to persons affected by the Scheme to make their representations against it, to the extent possible. It was for that reason that Rule 5 was struck down as being a blatant attempt at bypassing Section 68E of the Act.

24. But there is no such vice in the case of a draft scheme containing particulars regarding the minimum and the maximum number of vehicles and daily trips on a particular route. Before the Scheme containing such particulars is approved or modified by the Government, the procedure prescribed by Section 68C as regards publication and by Section 68D as regards the hearing of objections, would have been gone through. In the instant case, the procedure was strictly followed and the draft scheme was approved with slight modifications, so that the Scheme in the instant case cannot be placed on a par with Rule 5, which was held to be, void by the Supreme Court Where particulars regarding minima and maxima are given in a draft scheme and after considering the objections or representations made by affected parties, the Scheme is approved by the State Government, no question of cancellation or modification of the Scheme by a State transport undertaking can arise, except perhaps where in working the Scheme, the State transport undertaking does not adhere to the minima or maxima.

25. It follows that the Scheme as proposed by the Corporation and as approved by the concerned Minister, does not suffer from any vitiating factor. It is therefore good and valid.

26. The next attack was on the implementation of the approved Scheme. It was urged by the learned advocate for the petitioners that in giving effect to the Scheme and in cancelling the permits of the petitioners, the Regional Transport Authority, Mahabubnagar, has not complied with the peremptory provisions of Rule 11 of the Rules, in that no notice was given to the petitioners before the order cancelling their permits and granting permits to the Corporation was made by the Regional Transport Authority, by its order dated 25th February 1964. There is considerable force in this contention. It is not disputed that in fact, no notice was given to the petitioners intimating that their permits would be cancelled at a meeting of the Regional Transport Authority to be held on 25th February, 1964. The mandatory nature of Rule 11 and the necessity for its observance, can hardly be doubted. The Rule is intended to give the affected operators sufficient time to wind up their business and adjust their affairs.

27. In Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, the scope and effect of Rule 11 were considered by their Lordships of the Supreme Court. Subba Rao, J., delivering the judgment of the Court, observed at p. 60 (of SCJ): (at p. 1382 of AIR) as follows:

"A subsidiary argument is raised on the basis of Rule 11 of the Andhra Pradesh Motor Vehicles Rules, It is contended that the Road Transport Authority made an order rendering the permits of the appellants ineffective without giving them due notice as required by that Rule and therefore the said order was invalid. Rule 11 of the said Rules reads:

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

- (i) render the permit ineffective beyond a specified date;
- (ii) reduce the number of vehicle authorised to be used under a permit; or
- (iii) curtail the area or route covered by the permit in so far as such permit relates to the notified route; give due notice to the persons likely to be affected in the manner prescribed in these rules."

This rule will have to be read along with Section 68-F Sub-section (2), which reads:

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

- (a) refuse to entertain any application for the renewal of any other permit;
- (b) cancel any existing permit;
- (c) modify the terms of any existing permit so as to-
 - (i) render the permit ineffective beyond a specified date;
 - (ii) reduce the number of vehicles authorised to be used under the permit;
 - (iii) curtail the area of route covered by the permit in so far as permit relates to the notified area or notified route."

A combined reading of Section 68-F (2) and Rule 11 makes it clear that the order contemplated under the said sub-section can be made by the Regional Transport Authority only after giving due notice to the persons likely to be affected by the said order. On December 24, 1958, the Regional Transport Authority made the following order:

"The permits of the following buses are rendered ineffective beyond 24th December, 1958. u/s 68-F(2)(c)(i) of Motor Vehicles Act, 1959 (as amended by Act C of 1956} for the purpose of giving effect to the approved scheme of nationalisation in respect of the following notified routes."

The routes on which the appellants were operating their buses were also included in the routes mentioned in the order. On December 24; 1958, the Regional Transport Authority issued an order to the operators directing them to stop plying their buses on their respective routes from December 25, 1958, and that

order was served on the appellants on the same day, i.e., December 2-4, 1958. Though the learned Advocate-General suggested that the provisions of Rule 11 have been satisfied in the present case, we find it impossible to accede to this contention. There are two defects in the procedure followed by the Regional Transport Authority;

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

Having said that, their Lordships did not think it necessary to interfere with the order of the High Court, declining to set aside the order of the Regional Transport Authority, and give another opportunity to the operators to make their representations on the ground that it would be an empty formality in the circumstances of the case because by the time the matter was heard by the High Court, the operators had withdrawn their vehicles on the concerned routes and the vehicles of the Corporation had been plying on the routes.

28. In the present case, however, the position is entirely different. As noticed supra, by an order of this Court dated 17th June, 1984, the petitioners have been running their buses on the route in question from 22nd June, 1964 upto now and as from that date, the Corporation has withdrawn its buses; and from 22nd January 1964 the petitioners have been depositing money at the rate of Rs. 100 per day and these amounts are now with the Regional Transport Officer, Mahbubnagar.

29. As we are satisfied that the order passed by the Regional Transport Authority on 25th February, 1964, granting permits to the Corporation and cancelling the permits of the petitioners, is bad for non-compliance with the mandatory provision as to notice as prescribed by Rule 11, we allow the writ petition in part and quash the order of the Regional Transport Authority. Mahbubnagar (Respondent No. 2) in C. No. 11873/A2/63, dated 25th February, 1964. It is, however, open to the 2nd respondent to take fresh action to give effect to the approved Scheme after complying with the provisions of Rule 11 of the Rules.

30. We further direct that the amounts so far deposited by the petitioners with the Regional Transport Officer, Mahbubnagar, shall be returned to them forthwith.

31. Before concluding, we may advert to one other point made on behalf of the petitioners with regard to the jurisdiction of the Regional Transport Authority, Mahbubnagar, to entertain the application of the Corporation u/s 68F of the Act and Rule 11 of the Rules for the grant of permits in pursuance of the approved

Scheme. The argument was that since the major portion of the route in question i.e., 29 miles out of a total of 53.6 miles lies in Hyderabad District and the remaining portion of 24.6 miles, lies in Mahabubnagar District, the Regional Transport Authority of Mahabubnagar was not competent to entertain and allow the application of the Corporation for permits. In the first place, the accuracy of the figures given by the petitioners is disputed by the respondents and according to them, 28 miles of the route in question lie in Mahabubnagar District and only 25.6 miles lie in Hyderabad District. However, even on the footing that a stretch of 29 miles out of a total of 53.6 miles, lies in one region and a stretch of 24.6 miles lies in the other region, it is obviously a case where the portion of the route in each of the regions is approximately equal, in which case, as the vehicles are kept in Mahabubnagar District, the Regional Transport Authority of that region is the proper authority before whom the application for permits is to be filed: vide Section 45 of the Act. Indeed, the petitioners themselves had applied for permits to the Regional Transport Authority, Mahabubnagar, and obtained them. There is thus no substance in the contention.

32. In the result, the writ petition is allowed in part to the extent indicated above; but in the circumstances, there will be no order as to costs.