

(1973) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petitions Nos 281, 287, 344 to 362, 372, 16 to 418, 430, 463, 464, 476, 490 to 493, 502 to 521, 524, 530 to 533, 36, 514 to 547, 576 to 580, 582, 584 to 587, 593, 599, 614, 632 and 630 of 1973

Sitaram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-11-1973

Acts Referred:

Constitution of India, 1950 — Article 14

Road Transport Corporations Act, 1950 — Section 11, 12, 14, 15, 18

Citation : (1973) 6 WLN 917

Hon'ble Judges : Kan Singh, J;C.M. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kan Singh, J.—We have before us a bunch of 63 writ petitions. The petitioners therein challenge the validity of certain schemes of nationalisation over some routes in Rajasthan and as they raise some common questions of law, they were called on for hearing together and can conveniently be disposed of by a common judgment.

2. By a notification published in the Rajasthan Gazette on 29-11-72, the Rajasthan State had nationalised 3 routes in the Kota region which were Kota-Jhalawar-Aklara, Kota Chechat and Kota-Ramganjrandi. In pursuance of the scheme the Rajasthan State Roadways Department started providing transport services over these routes. It may be mentioned that though the routes both the termini of which fell on the nationalised routes were covered by the approved scheme, the other routes which partially overlapped (i e both or ore of the termini of which routes were beyond the nationalised routes and overlapping was on a portion) were left untouched and the operators of those routes continued to provide transport services on their routes including the portions overlapping the nationalised routes. From 1st October, 1964, the Rajasthan State Government

constituted the Rajasthan State Road Transport Corporation hereinafter referred to as Corporation, u/s 3 of the Road Transport Corporation Act, 1950, hereinafter to be referred as the "Corporation Act". By identical notifications dated 22-9-69 the General Manager of the Corporation published schemes of nationalisation for the routes that partially overlapped the aforesaid 3 nationalised routes. The operators on these partially overlapping routes then filed objections against the draft schemes and the objections were heard by the Deputy Legal Remembrancer to the Government of Rajasthan who was an officer authorised by the Government to hear objections on its behalf and to approve the schemes with or without modifications, as he thought fit. The Deputy Legal Remembrancer eventually passed a common order in respect of all the draft schemes & approved 17 schemes which were of total exclusion of all private operators on the routes or portions thereof. The schemes were ordered to come into force on 15-4-73 or thereafter. These approved schemes were duly published in the Gazette.

3. In the writ petitions a number of grounds have been taken for assailing the validity of the schemes. A common ground in all the writ petitions is that the schemes were not prepared or caused to be published by the Corporation, but this was done by the General Manager of the Corporation who had no authority to do so. In this connection the vires of Rule 3 of the Rajasthan State Road Transport Services (Development) Rules, 1965, hereinafter to be referred as the "Rules", is being challenged on the ground that it was repugnant to Section 68C of the Motor Vehicles Act, 1939. It was further contended that the Corporation had neither formed any opinion for the running of any transport services on the routes covered by the draft schemes, nor had it asked the General Manager to prepare or published the schemes. The vires of Rule 4 were also challenged on the same ground that it has been left to the General Manager to furnish the particulars in the scheme. Then one of the writ petitioners Shri Gopal Kishan Menon (Writ Petition No. 449/73) questioned the validity of the scheme pertaining to his route on the ground that he was providing transport service on an inter-state route (Barkhera Machalpur in Madhya Pradesh) and a draft scheme of nationalisation could only be initiated by the Central Government as envisaged by Section 68J of the Motor Vehicles Act, 1939.

4. The writ petitions were contested by the State of Rajasthan and the Corporation. It was denied by them that the schemes were bad on any of the grounds urged by the petitioners. It was submitted that Rule 3 of the Rules was valid and further the Corporation had passed a resolution for nationalisation of these routes and had authorised the General Manager to publish the schemes in the Gazette. In the alternative it was submitted that the Corporation had resolved at a properly convened meeting that the aforesaid partially overlapping routes be nationalised and, therefore, the schemes could be said to have been prepared by the Corporation and the General Manager of the Corporation who was nothing but a limb of the Corporation could properly give effect, to the resolution of the Corporation by filing in the necessary details and publishing the

schemes in the Gazette. The various other grounds taken in the writ petitions were also countered.

5. Shri Natesan who appeared for Shri Gopal Krishin Menon and for Shri Sita Ram Sharma (writ petitions No. 281 of 1973 and No. 430 of 1973) made the leading argument. The other learned Counsel who followed him besides adopting Shri Natesan's argument urged additional points arising in their respective writ petitions.

6. It will be convenient to deal with the common question regarding the vires of Rule 3 of the Rules in the first instance.

7. Chapter IV A containing Sections 68 A to 68 I was inserted in the Motor Vehicles Act, 1939 with a view to facilitating the nationalisation of transport services in the country on a uniform basis. Section 68A is the definition section. The term "State Transport Undertaking" means any undertaking providing road transport service where such undertaking is carried on by (1) the Central Government or a State Government; (2) any road Transport Corporation established u/s 3 of the Road Transport Corporation Act, 1950; (3) ... (4) any Municipality or any Corporation or Company owned or controlled by the Central Government or one or more State Governments Section 68B gives everriding effect to Chapter IV A vis-a-vis Chapter IV and other laws. It lays down that the povisions of the Chapter and the Rules and order rr,ade thereunder shall have effect notwithstanding anything inconsistent there with contained in Chapter IV of the Act or in any other law for the time being in force or in any instrument having the effect by virtue of such law.

8. Section 68C which is regarding preparation and publication of schemes reads as follows:

68C Preparation and publication of scheme of road transport service of a State Transport Undertaking.--Where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking whether to the exclusion, complete or partial, of other persons or otherwise, the State Transport Undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct.

Section 68-D is about the hearing of objections to the scheme. We may read this section as well:

68D. Objection to the scheme--(1) On the publication of any scheme in the

Official Gazette and in not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme:

- (i) any person, already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme;
- (ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government; and
- (iii) any local authority or police authority within whose jurisdiction any part of area or route proposed to be covered by the scheme lies,

may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify the scheme.

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

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

9. Section 68E, inter-alia, is about the cancellation or modification of the scheme. It lays down that any scheme published under Sub-section (3) of Section 68D may at any time be cancelled or modified by the State Transport Undertaking and the procedure laid down in Sections 68C and 68D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be cancelled or modified as if the proposal were a separate scheme. Section 68F is regarding the issue of permits to the State Transport Undertaking. Section 68FF is concerning the restriction regarding the grant of permits in respect of a notified area or route Section 68G is regarding principles and method of determining compensation. Section 68H is regarding payment of compensation Section 68HH is regarding disposal of articles found in vehicles and Section 68 I is regarding the rule making power of the State Government and it reads as follows:

Section 68-I. Power to make rules--(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the form in which any scheme or approved scheme may be published u/s 68-

C or Sub-section (3) of Section 68D,

(b) the manner in which objections may be filed under Sub-section (1) of Section 68D,

(c) the manner in which objections may be considered and disposed of under Sub-section (2) of Section 68D,

(cc) the manner in which application under Sub-section 68F may be made,

(ccc) the period within which the owner may claim an article found left in any transport vehicle u/s 68HH and the manner of sale of such article,

(d) the manner of service of orders under this Chapter,

(e) any other matter which has to be, or may be, prescribed.

10. We may next turn to the provisions of the Rules, Rule 1, inter alia, provides that they shall apply to the State Transport Undertaking known as the Rajasthan State Road Transport Corporation and matters and persons concerned therewith Rule 2 contains the definitions. The term "General Manager " means the General Manager of the Rajasthan State Road Transport Corporation and includes any other officer who may be authorised by the State Government or the Corporation to perform the functions of the General Manager. The term ""scheme" means a scheme framed in pursuance of Section 68C of the Act, and the term "State Transport Undertaking"" means the Rajasthan State Road Transport Corporation established u/s 3 of the Rajasthan State Road Transport Corporation Act. Rules 3 and 4 read:

Rule 3. Preparation of scheme--(1) A scheme u/s 68 C of the Act will be prepared by the General Manager of the State Transport Undertaking.

Rule 4. Particulars of the scheme -The schema 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 route 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;

(v) any other information which the General Manager wants to add.

Rule 5 is regarding the manner of filing objections and Rule 6 is regarding consideration and disposal of objections. Rule 1 lays down that the scheme as approved or modified shall be published in the Rajasthan Gazette. Rule 8 relates to consequence of publication of the scheme. Rule 9 provides the penalty for the contravention of the scheme. Rule 10 lays down the procedure for giving effect to the approved scheme. We may read this rule:

Rule 10. Giving effect to the approved scheme:-(a) For the purpose of giving effect to the approved scheme, the Regional Transport Authority concerned shall forthwith cancel or modify or refuse to renew or make ineffective the existing permits in respect of the notified route or portion thereof and serve upon the holder of such permits notices to that effect.

(b) Simultaneously with, or subsequently to, the issue of notices under Clause (a) the Regional Transport Authority concerned shall, if it considers it proper and decides to offer to the holders of existing permits an alternative route within the meaning of Sub-section (2) of Section 68G of the Act, in lieu of compensation payable under Sub-section (1) of the said section, another notice to the holder of existing permits specifying the alternative route which is so offered to them and requiring them to convey their acceptance thereof within a period of fortnight of the service of the notices on them.

(c) In the case contemplated by Clause (b) the Regional Transport Authority shall also publish a copy of the notice in the official Gazette calling upon the holders of existing permits for the proposed alternative routes to make representations in writing within 15 days of its publication, if any, in respect of the proposed offer.

(d) Any representations received by the Regional Transport Authority in pursuance of Clause (c) within the time limit specified thereunder shall be taken into consideration by it and the authority may then pass such orders as it may deem fit.

(e) Nothing contained in Chapter IV of the Act or in the rules made thereunder shall apply to the proceedings taken under these rules

Rule 11 provides for supersession of the existing rules namely, State Road Transport Services (Development) Rules, 1960.

11. The argument of Shri Natesan, in brief, is that while Section 68G of the Motor Vehicles Act requires the State Transport Undertaking, here the Corporation, to form the opinion as mentioned in the section and to prepare the scheme and cause it to be published, Rule 3 creates a parallel authority namely, the General Manager to prepare the scheme. Thus, according to him, Rule 3 is ultra vires being in conflict with Section 68C. He disputes the proposition that the General Manager is a limb of the Corporation. He referred us to the relevant provisions of the Corporation Act, and took the stand that powers of the corporate body vest in the Chairman and the member appointed u/s 5 of this Act and any decision of the Corporation can be taken only by the members of the Corporation at a meeting in accordance with Section 11. According to Section 12, a Corporation may, from time to time, by a resolution passed at a meeting appoint committees of its members for performing such functions as may be specified in the resolution or it may delegate at any such committee or to the Chairman or Vice Chairman, subject to such conditions and limitations, if any, as may be specified in the resolution such of its powers & duties as it may think fit, but the Chief

Executive Officer or General Manager of the Corporation can be authorised object: to such conditions and limitations, if any, as may be specified in the resolution to exercise such powers and perform such duties as it may deem necessary for the efficient day to day administration of its business. Shri Natesan submitted that the question of the preparation of a scheme cannot be characterised, unlike the running of services, as a day to day business within the meaning of Section 12(c) of the Corporation Act.

12. The learned Advocate General, on the other hand, submitted that the General Manager vis- a-vis the Corporation was in the same position as a Civil servant of the Government vis-a-vis the Government. In other words, according to him, the General Manager was the alter ego of the Corporation. Learned Advocate General referred to Section 68D of the Motor Vehicles Act in particular and by way of analogy submitted that though Section 68D speaks of the State Government approving the scheme yet by making a provision in the business rules of the Government the Deputy Legal Remembrancer has been empowered to hear objections against the draft scheme or to approve it with or without modifications. If this could be done by the Deputy Legal Remembrancer: without the case or the scheme going to the State Government at all, learned Advocate General argues, the same thing could be done by the General Manager without the scheme itself being prepared by the Corporation. Thus, the learned Advocate General seeks "to Sustain the validity of Rule 3 of the Rule, by characterising it as a business rule for the Corporation. Learned Advocate General further submitted that the Rules having been made u/s 68-I of the Motor Vehicles Act over ride the provisions of Section 12(c) of the Corporation Act by virtue of Section 68B and thus the provisions of Section 12(c) of the Corporation. Act cannot be pressed into service for invalidating Rule 3 of the Rules.

13. By way of rejoinder Shri Natesan submitted that there can be no analogy between the functions of the General Manager under the Corporation Act and the civil servants of the Government acting under the business rules. According to Shri Natesan, if at all the rules for the conduct of the business of the Corporation have to be framed, they could be framed only under the Corporation Act and not under the Motor Vehicles Act.

14. The learned Advocate General further submitted that the vires of Rule 3 have been upheld by a learned Single Judge of this Court in a recent case *Kamal Chand v. State of Rajasthan and Ors.* (S. B Civil Writ Petition No. 615 of 1971) and other connected cases decided on 9-4-73. He relied on the following passage:

A perusal of Section 68C of "the Act" makes it clear that it relates to three stages of a scheme viz formulating the opinion about the scheme and its publication. The main thing in that section is that first of all "the Corporation" or the State Undertaking should form its opinion about the feasibility of a scheme regarding particular route or area. If that is done by "the Corporation" then the preparation of the scheme can be done by the General Manager of "the Corporation" who is not only a responsible member of "the Corporation" but its

executive head as well vide Section 15 of "the said Act". There is, therefore, nothing wrong if after "the Corporation" has taken a decision regarding a particular scheme as envisaged in Section 78C of "the Act", its executive head prepares the scheme and publishes the same as required under that section. I am fortified in taking this view by S. Abdul Khader Saheb Vs. The Mysore Revenue Appellate Tribunal, Bangalore and Others, In that case also the scheme was prepared and published by Shri Guru Prasad styling himself as the General Manager of the State Transport Undertaking of the Andhra Pradesh Road Transport and it was held that Shri Guru Prashad had a statutory authority for representing the State Undertaking. It might be pointed out that in the scheme published by Shri Guru Prasad the word "opinion" with reference to Section 68 C "the Act" did not find place still the scheme was held valid. It is not the whole of the Corporation which sits and prepares a scheme. That is not practicable also. When once the fundamentals about the scheme are discussed and the Corporation opines about its feasibility the details in that matter can be carried out by its Executive Head, w,ho is its one of the members also. In this view of the matter Rule 3 of the Rules" cannot be said to be ultra vires.

Learned Advocate General even went to the length of submitting that the special appeal against the aforesaid judgment of Gattani, J. having been dismiss by a Division Bench of this Court and that Bench having upheld the opinion of Gattani, J we are precluded from considering the question of the vires of Rule 3 of the Rules. We may read the relevant observations of the Division Bench in this behalf:

We have heard learned Counsel at length. Some of the arguments raised by him do not find place in the writ petition and the other grounds raised also do not appeal to us. The appeal is dismissed summarily.

15. We are afraid, the above order of the Division Bench cannot, with all respects, preclude us from considering the vires of Rule 3 As we pointed out to learned Advocate General, in the course of the arguments, the observations in the above order of the Division Bench dismissing the appeal in limine are per incurium and, therefore, not binding on us. The order of the Division Bench does not disclose what arguments were addressed and in particular whether it was in agreement with the learned Single. Judge concerning the observations about he vires of the rule. In the circumstances, with all respect, we feel the question is open for examination by us. We propose to consider the observations of the learned Single Judge hereinafter.

16. It is note worthy that rules under the Motor Vehicles Act are made after prior publication and when made they are required to be laid fur not less than 14 days before the Parliament or the State Legislature, as the case may be, and are subject to such modifications as the Parliament or such Legislature may make during the session in which they are so laid The rule of interpretation regarding such statutory rules is as stated by Maxwell on Interpretation of Stasutes, Tenth Edition, at page 50:

Instruments made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days, during which period they may be annulled by a resolution of either House, but that if not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise, exactly as if they were in the Act. If there is a conflict between one of these instruments and a section of the Act it must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with. If reconciliation is impossible, the subordinate provisions must give way, and probably the instrument would be treated as subordinate to the section. If a statutory instrument contains words identical to those used in the Act under which it is made, those words must be construed in the same way as they are construed in the Act.

17. Now, Section 68C requires the State Undertaking to form the opinion that for the purpose of providing efficient, adequate and properly coordinated road transport service it is necessary in the public interest that road transport services in general or in particular class of such service or in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking whether to the exclusion complete or partial of other persons or otherwise. Once the State Transport Undertaking has formed the opinion then it may prepare a scheme and the scheme shall provide: (1) particulars of the nature of the services proposed to be rendered, (2) the area or route proposed to be covered, (3) the State Undertaking shall cause every such scheme to be published in the Official Gazette and also such other manner as the State Government may direct. Where a State Transport Undertaking is carried on by a Corpora it is the Corporation which is the State Transport Undertaking which ha form the opinion and frame and notify the scheme. Now cap we say that the General Manager is an entity outside the Corporation and not a part or a limb of it? According to Section 5 of the Corporation Act the Corporation consists of a Chairman and such number of other members as the State Government may think fit to appoint. The meetings of the Corporation are held according to Section 11 of the Corporation Act. According to Section 4, every Corporation shall be a body corporate having a perpetual succession and a common seal and shall be sued or can sue in its name. Chapter III lays down the powers and duties of the Corporation. According to Section 8 occurring thereunder it is the general duty of the Corporation so to exercise its powers as progressively to provide or secure or promote the provision of an efficient adequate, economical and properly coordinated road transport services in the State and in any extended area. u/s 14 every Corporation shall have a Chief Executive Officer or General Manager and a Chief Accounts Officer appointed by the State Government. u/s 19 the Chief Executive Officer or General Manager shall be the excuive held of the Corpoiation and all other Officers and servants of the Corporation shall be subordinate to him.

18. It is true, u/s 12(c) of the Corporation Act the Corporation may authorise the

General Manager by a resolution to exercise such powers & perform such duties as it may deem necessary for the efficient day to day administration of its business none the less the General Manager is a limb of the Corporation and not someone outside it. It is also true, the preparation of the scheme as such may be more than mere carrying on the day to day administration of the business of the Corporation, but then that will be having a bearing on the powers exercisable by the General Manager. From that alone it cannot be held that the General Manager is not a limb of the Corporation. Rule 3 of the Rules, to our mind can be harmonised within the fabric of Section 68C of the Motor Vehicles Act. The forming of the opinion for the purpose of making provision for an efficient, adequate, economical and properly coordinated, road service which is necessary in the public interest is left to the State Undertaking as such and has not been assigned to the General Manager by the Rules, So far as the preparation of the scheme itself is concerned, there is overlapping between the section and the rule, but from that alone again it cannot be said that the rule provides for something which is inconsistent with the section. The rule can be harmonised with the section by reading the two in a way that whereas the important part regarding the formulation of the two ingredients of the scheme namely, (1) regarding the nature of the services proposed to be rendered, and (2) regarding the area or route proposed to be covered remain with the Corporation itself, the part of the scheme relating to putting in the particulars prescribed by the rules are left to the General Manager, Likewise, it will be the General Manager who will put the whole thing in a proper form so as to be presentable. Then again the preparation of the scheme in the Gazette could be left to the General Manager. The use of the words "prepare or prepared" in relation to the scheme in the rules does not create any contriety as to warrant the striking down of the rule. The preparation of a scheme is a comprehensive process. The broad outlines of the scheme regarding the nature of the services and the route or area are to be settled by the Corporation and the other necessary particulars could be put in by the General Manager. Reconciliation between the provisions of the statute and the Rules is not, in our view, impossible and it is only when such a reconciliation is found to be impossible that the rule has to be held ultra vires the statute, We will be considering the question whether the routes involved were indicated by the Corporation itself or not. We, therefore hold that Rule 3 is not ultra vires as contended.

19. Now, a word regarding the observations of Gattani J. We may not endorse all the reasons given by Gattani, J. for his conclusion, but we are in agreement with him that once the fundamentals about the scheme are settled by the Corporation the details in the matter can be supplied by the G.M who is the Chief Executive Officer of the Corporation. We, however, do not find ourselves in agreement with him that the fact that the General Manager happens to be appointed also as a member of the Corporation should make any difference since no functions are assigned to any single member as such. It is just a coincidence that the General Manager here happens to be a member of the Corporation, but while preparing a

scheme he only acts as a General Manager and not as a member.

20. Though in some of the writ petitions vires of Rule 4 of the Rules were also challenged yet no arguments were advanced.

21. The other questions argued now fall to be considered on the footing that Rule 3 of the Rules is valid.

22. We may next advert to the question whether the Corporation can be said to have formed the opinion as envisaged in Section 68C for the necessity of providing transport services by the Corporation. We may first look at the notification publishing the scheme (Rajasthan Gazette Extraordinary dated 24-9-69). Its preamble is as follows:

No. RSRTC/3scheme/Ramganjmandi--Sarda/69. Whereas the State Transport Undertaking known as the Rajasthan State Road Transport Corporation is of opinion that for the purpose of providing an efficient adequate, economical and properly co-ordinated road transport services, it is necessary in the public interest that road transport services on the routes mentioned in Clause (1) of the annexed scheme should be run and operated by State Transport Undertaking to the complete exclusion of other persons.

Now, therefore, in exercise of the powers conferred by Section 68C of the Motor Vehicles Act, 1939 (Central Act IV of 1939) and in pursuance of Rules 3 and 4 of the Rajasthan State Road Transport Service (Development) Rules, 1965, the scheme hereto annexed in respect of Passenger Road Transport Services to be run and operated by State Transport Undertaking is hereby published.

Any person whose interests are affected by scheme may within THIRTY DAYS (30 days) of the date of publication of scheme in the Rajasthan Rajpatra file objections if any, before the Secretary (Commissioner for Home Affairs) to the Government of Rajasthan in the Transport Department in accordance with the procedure laid down in Rule 5 of the above mentioned Rules.

Then under its cover the scheme is published and it is signed by Shri H.S. Rawat, General Manager. It shows that the State Transport Undertaking formed the requisite opinion and it was then that exercise of the powers conferred by Section 68C and Rules 3 and 4 of the Rules the scheme was being published. What is contained in the notification is prima-facie evidence of what took place and a heavy burden lies on the petitioners to show that the Corporation did not form the opinion. Apart from this the resolution of the Corporation has been placed before us and it is Ex.R/2 (in writ petition No. 449/72). It first notes down the presence of the members and then it is mentioned therein that the note of the General Administration (Traffic Deptt) was considered and then it was resolved that the schemes of nationalisation for the overlapping routes mentioned therein on Kota-Aklara, Kota Chechat, & Kota-Ramganjmadi and others, if any, be framed and published. The resolution then mentions 21 routes in all. If the resolution were to stand alone perhaps there could have been much

to Bay on the side of the writ petitioners, but the resolution has to be read in the light of the notice of the General Administration (Traffic Department) which is Ex. R/1 in writ petition No. 449 of 1973. The note gives the history of the nationalisation in the following words:

Before the Corporation came into being, the schemes of nationalisation of road transport were prepared by the Rajasthan State Roadways Department of the Government of Rajasthan. One such scheme for providing efficient, adequate, economical and properly coordinated road transport service was prepared for Kota-Jhalawar -Aklera, Kota-Chechat and Kota-Ramganjmandi routes of Kota region inclusive of overlapping routes or portions thereof. This scheme was published in Rajasthan Gazette on 29th November 1962.

Then in para 2 it was mentioned that 24 routes were proposed to be included and the 24 routes are mentioned. Para 3 says that the scheme that was finally approved by the Joint Legal Remembrancer excluded the partially overlapping routes. Para 4 of the note clearly mentions that the other routes as mentioned in para-2 were left in tact. Then in para 5 is noted:

The result is that the permit holders of all the 24 routes mentioned in para 2, except the permit holders of aforesaid three routes are plying on their routes. Their routes have neither been curtailed nor any condition that the portions of their routes on the nationalised portion of our route shall become ineffective has been inserted into their permits.

Then certain drawbacks in the existing state of things are pointed out in paras 6, 7 and 8 which are as follows:

6. In this way all other private operators are also plying on the major portion of our nationalised route Kota-Jhalawar-Aklera, Kota-Chechat and Kota-Ramganjmandi and we cannot prohibit them from doing in want of such a provision in our approved schemes.

7. Not only this, on these routes the number of permits is being increased day by day because the RTA is not forbidden from giving further permits on these routes in the scheme itself.

8. It is obvious that the Corporation is suffering a great deal because of this defective scheme and unless the defects left out in the original scheme are modified by another scheme, the operations results in Kota-region are not going to improve.

Then in para. 9 it was mentioned that in order to nationalise the overlapping routes a new scheme of nationalisation has to be brought out. A consolidated chart showing the names of the routes which overlap the nationalised routes alongwith their length and class and the number of permits and vehicles on them had been prepared and placed as an appendix to the note. Para-10 mentions that a chart showing the names of the permit holders and their vehicle numbers showing the dates of the validity of their present permits was also appended.

23. Reading Ex. R/1 and Ex. R/2 in conjunction we are satisfied that these separate scheme"s for "nationalising the "partially overlapping routes "individually were nothing but modification of the existing scheme of natidnalisation of the three routes Kota Jhalawar-Aklara, Kota-Chechat and Kota-Ramganjmandi published on 29-11-62. It is not necessary that every time the resolution should repeat the formula that for providing efficient, adequate, economical and properly coordinated State Road Transport Service in public interest that the State undertaking has to run its transport services over the routes. Learned Counsel emphasised that the note of the Traffic Department Went to show that it was because the Corporation was suffering losses that it wanted to take over these overlapping routes. In other words, their motive was mercenary and not one of acting in public interest. We find ourselves unable to agree. The present scheme was designed to be a modification of the existing schemes with a view to improving operational results. There was nothing wrong in it. Thus we are satisfied (1) that the necessary opinion requisite for initiation of a scheme as envisaged in Section 68-C of the Motor Vehicles Act was formed by the Corporation and (2) that the Corporation itself settled what routes were to be taken over and what nature of services were to be provided.

24. We were not impressed by the argument of Shri Natesan that it was not open to the State Government to enact a kind of business rule for the conduct of the business of the Corporation The State Government may not be able to make rules u/s 681 of the Motor Vehicles Act for the conduct of the business of the Corporation generally as that has to be done in accordance with the provision of the Corporation Act, but for the purposes of preparation of a scheme of nationalisation under Chapter IVA the State Government can certainly make a rule u/s 681 of the Motor Vehicles Act. Such a rule would be a special provision concerning the preparation of a scheme and by virtue of Section 68B of the Motor Vehicles Act it shall override the provisions of the Corporation Act and the Rules made thereunder.

25. We may now turn to the other points Shri Natesan, as already observed, argued regarding Shri Gopal Krishan Menon"s writ petition concerning his route that Section 68J vested the powers of nationalisation in the Gentral Government only and, therefore, the Corporation was not empowered to frame any scheme of nationalisation as that would undoubtedly be a scheme in relation to an inter-statal route or area within the meaning of Section 63J of the Motor Vehicles Act. The argument is unattractive. Section 68J reads as follows:

Section 68 J; Certain powers of the State Government exercisable by the Central Government.--The powers conferred on the State Government under this Chapter shall, in relation to a Corporation or Company owned or controlled by the Central Govt. or by the Central Government and one or more State Governments, be exercisable only by the Central Government In relation to an inter state route or area.

What Section 68J contemplates is a scheme pertaining to an inter-statal route. In

the present case the routes falling within Rajasthan alone have been covered by the schemes and, therefore, it cannot be said that the scheme is in relation to an inter statal route or area. Shri Natesan also referred to the proviso to Section 68D of the Motor Vehicles Act which lays down that no scheme which relates to any inter-statal route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government. The slight difference in the language of the two provisions does not induce us to hold that the present schemes were in relation to an inter- statal route. How the approved scheme will affect Shri Menon's permit over the inter-statal route is a matter that will have to be dealt with by the Regional Transport Authority while giving effect to the approved scheme in accordance with Rule 10 of the Rules. The Regional Transport Authority may cancel or modify or refuse to renew or make ineffective his permit in respect of the notified route as it may deem fit. Therefore, the contention has no force.

26. Now, we may deal with the other grounds urged by learned Counsel. Shri O.P Sharma, who appeared in writ petition No. 546/73 and other connected writ petitions, submitted: (1) that the Corporation was not properly constituted as the General Manager who was a servant of the Corporation could not have been made its member He maintained that a Servant cannot be a master (2) The Corporation cannot frame any scheme of nationalisation of the bus routes without making provision therein for acquisition of the buses and other assets pertaining to the running of the transport services belonging to the operators. Learned Counsel relied on Sections 18 and 46 of the Corporation Act. (3) The resolution of the Corporation Ex.R/2 does not empower the General Manager to prepare or publish the scheme. He underlined the words " be framed and published " occurring in the following part of the resolution:

It was resolved that the schemes of nationalisation for the following overlapping routes on Kota Aklera, Kota-Chechat and Kota-Ram Ganjmandi and others, if any, routes be framed and published.

Shri Sharma maintained that there is no mention of the General Manager in the resolution and he was never authorised either to frame or publish the schemes; the order having not been addressed to him. (4) Whereas the resolution mentions only 21 routes the schemes published by the General Manager do not include 5 of the specifically mentioned routes. On the other hand, the published schemes include 11 routes not specifically mentioned in the resolution. (5) The respondents had acted malafide. The ruling party was badly routed in the general elections in the Jhalawar and Kota districts and, therefore, these districts were specially chosen for nationalisation and it was at the be best of the then Chief Minister Shri Mohan Lal Sukhadia and the Transport Minister Shri Jamnadal Ladha that the General Manager Shri Rawat prepared the schemer. Shri Sharma emphasised that the averments of the petitioner had not been denied on any counter affidavit by Shri Ladha and the counter affidavit of Shri Rawat, according to him, was not sufficient. (6) The scheme was not properly published. He

pointed out that Section 68-C requires publication: (i) in the official Gazette, and (ii) in such other manner as the Government may direct. As the scheme was published only in the Gazette and not by any other mode, the same was bad, according to Shri Sharma (7) The dropping of the 5 schemes has resulted in discrimination as the operators of the routes, covered in these schemes would be free to provide transport service over portions of the nationalised routes, but the petitioners were being denied this opportunity.

27. Shri Ahmed Bux, who appeared in writ petition No. 682/73 Sultani Begum v. State and Ors., and other connected writ petitions, besides repeating most of the arguments of Shri O.P. Sharma, submitted in addition that the Deputy Legal Remembrancer had acted illegally in consolidating all the objections and recording evidence only in one case and reading it for all the schemes. He then submitted that in the writ petitions argued by him the Corporation has not nationalised the whole of the routes with the result that the routes were cut in portions. This results in great inconvenience to the passengers. The operators concerned are required by the Corporation to empty the bus as it enters the road covered by the nationalised routes and the bus has to run empty over the corridor overlapping the nationalised route and then at the point it emerges out of the nationalised route the passengers could again be picked up. This would result in inconvenience to the passengers.

28. Shri L.L. Sharma, who appeared in writ petition No. 5417/73-Jhalawar Transport Service v. State and Ors. and other connected writ petitions submitted that the routes Jhalawar-Pirawa via Soyat was not mentioned in the resolution Ex. R/2 and therefore, the schemes were bad.

29. We may deal with the above contentions in the order we have mentioned them. Re. 1. Section 6 of the Corporation Act lays down the disqualifications for being chosen as, or for being, a member of a Corporation. It reads as follows:

Section 6. Disqualifications for being chosen as, or for being, a member of a Corporation.

(1) A person shall be disqualified for being chosen as, or for being, a member of a Corporation:

(a) if he is found to be a lunatic or a person of unsound mind; or

(b) if he has been adjudged insolvent; or

(c) if he has been convicted of an offence involving moral turpitude or

(d) if he has, directly or indirectly, any interest in any subsisting contract made with, or in any work being done for, the Corporation except as a shareholder (other than a Director) in an incorporated company, provided that where he is a shareholder he shall disclose to the State Government the nature and extent of shares held by him in such company; or

(e) if he has any financial interest in any other road transport under taking

(2). Nothing in Clause (d) of Sub-section (1) shall be deemed to disqualify the Chief Executive Officer or General Manager of a Corporation for being chosen as, or for being, a member thereof.

Perusal of Sub-section (2) unmistakably shows that the disqualification under Clause (d) of Sub-section (1) does not apply against a General Manager and Section 5 of the Corporation Act empowers the State Government to appoint any person as a member of the Corporation whom it may think fit to appoint. Therefore, there was no bar to the appointment of the General Manager as a member of the Corporation.

30. Re-2: Section 18 of the Corporation Act lays down the general duty of the Corporation to provide or secure or promote the provision of an efficient, adequate, economical and properly co-ordinated system of road transport services in the State. Section 40 makes provision for compensation for acquisition of road transport undertakings, but there is no section which makes it obligatory for the Corporation to acquire the assets of the private operators. Section 40 can be resorted to only when the Corporation decides to acquire any undertaking. It has been held by their Lordships of the Supreme Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, that the process of nationalisation does not involve a transfer of business or undertaking of the quondam permit holder to that new entrant. Indeed the process does not involve even a transfer of the permit from one to another. According to their Lordships, the true position is that one permit comes to an end and another permit comes into being. There is, therefore, no substance in the contention.

31. Re-3: There is no substance in this contention either. In the first place, as Rule 3 of the Rules has been need to be valid no particular direction is necessary for the General Manager to effectuate the resolution of the Corporation. In the second place, the mere fact that the General Manager as such has not been named in the resolution would not mean that the General Manager was not empowered to act in the manner he did. By law the General Manager being the Chief Executive Officer of the Corporation the orders shall be deemed to have been addressed to him and it will be for him to give effect to the resolution of the Corporation.

32. Re--4 & 7: To start with we were much impressed by the argument of Shri Sharma regarding the exclusion of the 5 routes mentioned by Shri Sharma. They were: (a) Kota--Jhalawar--Patan, (b) Kota--Jhalawar--Raipur, (c) Baran--Darra--Ramganjmandi, (d) Chechat--Jhalawai--Ranpur, (e) Jhalwar--Patan--Bnadwamandi. If these 5 routes were left out, of the net of nationalisation altogether we would have little difficulty in coming to the conclusion that the schemes were discriminatory and thus violative of Article 14 of the Constitution.

33. Shri Rajnarain Munshi, who argued the case for the Corporation, after the Advocate General, submitted that Kota--Jhalawar--Patan was a route both the

termini of which fell on the nationalised route and, therefore, it being already nationalised there was no need of including it in any scheme once again. As regards the remaining 4 routes he submitted that they were covered by other schemes and, therefore, It was with a view to avoiding duplication that they were dropped from the present scheme, but they have all been included in the other schemes. He invited attention to the relevant notifications published in the Gazette in that behalf. On the concluding day of the arguments on 24-10-73 we called upon Shri Munshi to file a proper affidavit of some responsible officer bringing out these facts. He was directed to give copies of the affidavit to learned Counsel for the petitioners. Accordingly Shri Munshi submitted the affidavit of one Shri Raghuveer Singh, Regional Manager, Rajasthan State Road Transport Corporation, Jodhpur in this behalf, The petitioners have not chosen to file any counter affidavit. Apart from this, as the references are to Gazette notifications they could be taken judicial notice of. It appears that Kota--Jhalawar--Ranpur route is covered by the schema of Kota-Jhalawar Pirawa published in the Rajasthan Gazette Extra-ordinary dated 24. 9. 69. The route Baran--Darra--Ramganjmandi is covered by the schema of Kota-Sangod Aklera published in the Rajasthan Gazette Extraordinary dated 24. 9. 69. The route Chechat--Jhalawar--Ranpur is covered partly by the scheme of Kota--Bakani route from Dhabade to Mandaware and partly by the Kota--Pirawa scheme from Mandaware to Ranpur. These schemes have been published in the Rajasthan Gazette Extra--ordinary of 24.9. 69. Further the portion of the route Dhabade to Chechat is also covered by the schema for the Kota - Chechat route published in the Rajasthan Gazette dated 26.9.64. The route Jhalawar--Patan--Bhawanimandi is covered by the Scheme Pachpahar--Jhalawar--Aklera published in toe Rajasthan Gazette Extra--ordinary dated 24. 9. 69. We are thus satisfied that there is no discrimination practised in the framing of the scheme. If a scheme for a longer route is under consideration then a separate scheme for a part of the route would be an unnecessary duplication There was thus no discrimination in the present case. Their Lordships of the Supreme Court pointed out in Nehru Motor Transport Co-operative Society Ltd. and Others Vs. The State of Rajasthan and Others, and Ramnath Verma Vs. State of Rajasthan, that there has to be conscious discrimination in the exclusion of similary routes to justify the holding of a scheme bad. We, therefore, over rule this contention as well.

34. Re--5: There is no force in the contention Shri H.S Rawat who was the General Manager had filed the counter affidavit. He has denied that Shri Ladba or the Chief Minister had asked him to prepare the schemes. We do not consider that the affidavits of the then Chief Minister or of the Transport Minister were necessary. There is no material on the side of the petitioners to show that the Corporation as a body was prevailed upon by the then Chief Minister or the Transport Minister to take over these routes The plea of bias or malafides is without any merit.

35. Re--6: Section 68-C requires the publication of the scheme in the any other manner. The State Government did not lay down any other mode of publication,

nor did it issue any other order directing an additional mode of publication. In the circumstances, the publication cannot be said to be insufficient so as to invalidate the initiation of the scheme as such. The initial publication is with a view to affording opportunity to persons concerned to file their objections and unless it can be shown that this purpose was not achieved the petitioners who had an opportunity cannot make any grouse.

36. Regarding the routes which were specifically mentioned in the resolution Ex. R/2 the routes which are overlapping routes on the 3 existing nationalised routes can be said, to be covered by the general words "others, if any" occurring in the resolution Ex. R/2. The scheme may be for a route or an area. Here the idea seems to be to enlarge the scope of the existing nationalisation schemes by including all the partially overlapping routes so that no private operator could provide transport service over any portion of the nationalised routes. That being so, the so-called newly added routes fall within the framework of the resolution, though we cannot help observing that things could have been done in a better way with imagination.

37. Now, coming to the additional arguments of Shri Ahmed Bux. A perusal of the records of the Deputy Legal Remembrancer shows that the different objections in the various schemes were consolidated and heard together on the request of all the learned Counsel appearing before the Deputy Legal Remembrancer clearly show that the statements of the three witnesses examined by the objectors were to be read for all the 26 schemes and Shri Ahmed Bux was one of the learned Counsel consenting to this consolidation. The argument is, therefore, altogether baseless.

38. Regarding the other contention of Shri Ahmed Bux it is sufficient to say that under Rule 10 of the Rules it will be for the Regional Transport Authority to decide in what manner it has to give effect to the approved scheme. The hardships pointed out by Shri Ahmed Bux, if genuine, could be removed by the Regional Transport Authority by an appropriate order. Shri Munshi took the stand that no other bus laden with passengers can enter the road covered by the nationalised route at all. He emphasised the words "no private operator shall ply any stage carriage or contract carriage on the road underlying these routes and portions thereof" occurring in the operative part of the order of the Deputy Legal Remembrancer. He further invites attention to the definition of the term "road transport service" in Section 68-A which means a service of motor vehicles carrying passengers for hire or reward. He submits that in carrying a bus laden with passengers though from points outside the nationalised route to other points outside the nationalised routes after traversing a portion of the nationalised route amounts to providing of transport service over the nationalised routes. With all respect, as at present advised, we are unable to accept the stand taken by Shri Rajnarain Munshi but as it will be for the Regional Transport Authority to pass appropriate orders under Rule 10 of the Rules, we do not propose to go into the matter at this stage.

39. Shri L.L. Sharma's contention is covered by what we have already said regarding the similar contention of Shri O.P. Sharma. No other points were argued.

40. The result is that all the writ petitions are without force and are accordingly hereby dismissed. We, however, leave the parties to bear their own costs.