

(2008) 07 KL CK 0066

In the High Court Of Kerala

Case No : Writ Petition (C) 15194 of 2008

Vijayan P.K. and Others

APPELLANT

Vs

The Govt. of Kerala

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

General Clauses Act, 1897 — Section 23
Kerala Motor Vehicles Rules, 1989 — Rule 10, 236, 237, 238, 239
Motor Vehicles Act, 1939 — Section 68, 68C, 68D, 68D(2), 68D(3)
Motor Vehicles Act, 1988 — Section 100, 100(1), 100(2), 100(3), 107

Citation : (2008) 3 ILR (Ker) 476 : (2008) 2 KLJ 934 : (2008) 3 KLT 941

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K.V. Gopinathan Nair, P. Gopalakrishna Menon, P. Deepak, Sajeev Kumar K. Gopal, I. Dinesh Menon, Jithesh Menon and Prasad Chandran, for the Appellant; K. Prabhakaran and P. Santhosh Kumar, SGP, for the Respondent

Judgement

Antony Dominic, J.—These writ petitions are filed praying for quashing the notification dated 06-05-2008 and for directing to consider and pass orders on the application for renewal of permit submitted by the petitioners, untrammelled by the aforesaid notification. In this judgment, facts as pleaded in W.P.(C) No. 15194 & 17813 of 2008 alone are referred and the exhibits referred to are in the order in which they are marked in W.P.(C) No. 15194/ 2008.

2. Petitioner in W.P.(C) 15194/2008 is the registered owner of stage carriage KL-5Q4050, operating on the long distance inter-district route Kottayam-Banthadukka. Ext. P1 permit was originally granted to one Shaji Kuruvilla and was valid for the period from 12-9-1996 to 11 -9-2001 and was subsequently renewed for a further period of 5 years upto 11-9-2006. In the meanwhile, with effect from 16-4-1998 the permit was transferred to the petitioner. Petitioner sought renewal of the permit for a further period of 5 years by submitting his application as early as on 10-6-2005. Since orders renewing the permit have not been passed, petitioner was operating his service on the strength of temporary

permits issued u/s 87(1)(d) of the Motor Vehicles Act, 1988, the last of which is Ext. P2, valid till 31-5-2008. As the period of Ext. P2 was expiring, petitioner submitted Ext. P3 application for temporary permit, but however, the 4th respondent is refusing to consider Ext. P3 since the petitioner had not submitted a no objection certificate from the 2nd respondent, K.S.R.T.C. It is stated that according to the 4th respondent, in view of the finalised scheme published vide Ext. P5 notification dated 6-5-2008 issued u/s 100(3) of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, for short) renewal of permit, either regular or temporary, can be granted only on obtaining an NOC from the KSRTC, the State Transport Undertaking.

3. The contentions urged is that the 1st respondent, exercising its power u/s 99 of the Act read with Rule 236 of the Kerala Motor Vehicles Rules (hereinafter referred to as the Rules, for short) had published Ext. P4, a proposal on 9-5-2007 relating to 31 routes in the State in supercession of the existing notification in regulation to those enumerated routes. Clauses 4, 5 and 19 of the schedule to Ext. P4 being relevant, are extracted below for reference:

4. Whether the services are to be In the Private Sector, permits, Operated by the State Transport regular and temporary existed on Undertaking to the exclusion or prior to 184-2007 alone will other person or otherwise. continue as such. Fresh permit will be given to the State Transport Undertaking only. 5. If the operation shall be the exclusion of other services: (a) Whether such exclusion Partial shall be complete or partial (b) Is such exclusion shall be As in schedule 4 above partial, the sectors of the route from where other service are to be excluded; and (c) Whether it is proposed to allow Yes, on portions of the other service to pick or set down permitted to operate passengers between any two places on the route covered by the scheme. 4. Whether the service are to be in the Private Sector, permits, regular Operated by the State Transport and temporary existed on or prior to Undertaking to the exclusion of other 18-4-2007 alone will continue as such. Persons or otherwise Fresh permit will be given to the State Transport Under taking only. 19. Any other information the State The right to operate any new service and Transport Undertaking may desire increase the trips in the above routes to be furnished in this connection will be reserved exclusively for Kerala State Road Transport Corporation. Private permits in any of the routes, will be replaced by Kerala State Road Transport Corporation by Notification as and when KSRTC is able to operate exclusively on such route.

It is stated that while the proposal published, was as above, on 6-5-2008 the 1st respondent published the approved scheme, as required u/s 100(3) of the Act. Clauses 4, 5 and 19 of Ext. P5 being relevant, are extracted below for reference:

4. Whether the services are to be Yes. The regular and temporary operated by the State Transport permits issued in the private sector Undertaking to the exclusion of on or prior to 9-5-2006 alone will other persons or otherwise. be allowed to continue for the time being. Such permits will be renewed only if the

STU is not willing to provide substitute bus in its vacancy. New permits will be issued in favour of State Transport Undertaking only permits issued after 9-5-2006 shall not be renewed at any circumstances. 5. If the operation shall be to the exclusion of other services: (a) Whether such exclusion shall be Partial complete or partial. (b) Is such exclusion shall be As in schedule 4 above partial, the sectors of the route from where other services are to be excluded; and (c) Whether it is proposed to allow Yes, on portions of the route, other service to pick or set down permitted to operate as in clause passengers between any two places 4 above. on the route covered by the scheme. 19. Any other information the State Right to operate any new service Transport Undertaking may desire and to increase number of trips in to be furnished in this connection. in the above routes will be reserved exclusively for Kerala State Road Transport Corporation. KSRTC will be free to replace any existing private permit in the above route on its expiry on the basis of last come first go.

4. It is contended that Clause 4, and 19 of Ext. P5 presents a clear departure from the corresponding clauses in Ext. P4 proposal. According; to counsel, while Ext. P4 envisaged saving and retention of all permits which existed on or prior to 18-4-2007, Ext. P5 provides for continuation of permits issued prior to a still anterior date, viz., 9-5-2006 and that too, only as a temporary measure. It is also contended that the renewal of the said permits would again be subject to obtaining a no objection certificate from the KSRTC as and when application for renewal of permit is considered, lit is submitted and that all permits granted between the period from 9-5-2006 to 18-4-2007 would be liable to be terminated on the expiry of its validity without any renewal. According to the petitioner this has been done without any notice to the permit holders.

5. Similarly in so far as Clause 19 of Ext. P5 is concerned, it is stated that this provision confers on the KSRTC an absolute discretion to pick and choose any private operator and demand on his vacating the route while at the same time ensuring continuance of other favoured persons. It is contended that though the replacement is to be made following the principle last come first go, in view of the insistence of the no objection of the KSRTC for renewal of permits, the power conferred is arbitrary and will lead to discriminatory treatment. According to the petitioners this is clearly at variance from the method for displacement contemplated by Exit. P4 proposal where the KSRTC could exercise its power by appropriate notification, and only when it could exclusively operate on the route. It is generally on the aforesaid basis, complaining that the statutory provisions have been violated and that natural justice has been denied to operators W.P.(C) No. 15194/08 has been filed seeking to quash Ext. P5 approved scheme.

6. A counter affidavit has been filed by the 1st respondent and a statement has been filed on behalf of the 2nd respondent. According to the 1st respondent, the Government had published Ext. P4 draft scheme pursuant to the undertaking given before the Hon"ble Supreme Court in Civil Appeal No. 4994/02. It is stated that the draft scheme was published in accordance with Section 99 of the Act and

that in terms of Section 99(2) when a proposal is published, then from the date of publication of such proposal no permit shall be granted to any person, except a temporary permit in the manner as provided therein. It is stated that Section 100 of the Act requires publication of the proposal for filing objections and that as per Sub-section (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 such proposal.

7. It is stated that it was in exercise of this power that after considering the objections that the 1st respondent had approved the scheme with suitable modifications. It is stated that the provisions of Chapter VI of the Act have got overriding effect over Chapter V and other laws and once the scheme has been finalised and published u/s 100(2) it is a law and is binding on all parties. In the counter affidavit, the grounds on which Exts. P5 is challenged are all denied by the 1st respondent and the 1st respondent submits that the scheme is liable to be upheld by this Court.

8. In the statement filed on behalf of the 2nd respondent they would contend that once a proposal is notified inviting objections, the State Government is bound to consider the objections and thereafter approve and publish the scheme in the manner as provided u/s 100(2) of the Act. While finalising the draft scheme the State Government is entitled to either approve the same as such or approve the draft with modifications. It is stated that the modifications made to Ext. P4 are in exercise of the power u/s 100(2) of the Act and that the contentions raised in the writ petition have no substance.

9. The petitioners in W.P.(C) No. 17813/08 submits that the consequence of the Division Bench judgment in *Rahul Tom v. K.S.R.T.C.* 2001 (3) KLT 261 in which the 1st petitioner herein was the petitioner, was abrupt stoppage of more than 17,000 private stage carriage operators in the private sector. Against the aforesaid judgment, appeals were filed before the Apex Court and by Ext. P1 order, the parties were directed to maintain status quo pending further orders in the appeal. It is stated that subsequently leave has been granted and Civil Appeal No. 4994 of 2002 and connected matters are pending consideration of the Apex Court. The Apex Court subsequently passed Ext. P2 order directing that the KSRTC and the private operators shall give their suggestions to the State Government as to how workable arrangements can be worked out to prevent unnecessary inconvenience to the travelling public. It was directed that the concerned authorities of the State Government will have discussions with the parties and find out a solution, if possible. Petitioners submit that in implementation of Ext. P2 order, suggestions were made to the State Government and that discussions were also held on various occasions. It is stated that finally the State Government issued Ext. P3 order dated 31-12-2005 where it was stated that "the private Stage Carriage Operators as on 2-11-2005 are permitted to operate their service buses along with the KSRTC. The Transport

Commissioner will forward necessary proposals to Government for the amendment of the supplementation scheme forthwith". It is stated that it was in pursuance to Ext. P3 Govt. Order that when draft notification was issued on 9-5-2006 u/s 99 of the Motor Vehicles Act, 1988, Clause 4 thereof provided that the existing private operators will be permitted to continue. However, objections were raised against Clauses 4 and 19 of Ext. P4 and as a result thereof, the State Government appointed an expert committee consisting of Transport Minister, Industries Minister, Labour Minister, Transport Commissioner and Secretary to Government, Transport to consider the entire aspects of the matter. According to the petitioners, report was submitted by the aforesaid committee, with a suggestion to retain all existing services without any interruption. Petitioners submit that it was accepting this recommendation that when preliminary notification was issued on 9-5-2007, Clauses 4 and 19 were suitably modified safeguarding the interests of the existing private operators. It is stated that in view of the safeguards that were incorporated in the notification dated 9-5-2007, petitioners had no cause to raise any objection.

10. Referring to page 7 of the counter affidavit filed by the State in W.P.(C) No. 17876/08 it was contended that though the Government admits the constitution of the expert committee, no reason whatsoever has been stated for ignoring the recommendations made by the committee. On the other hand, as rightly contended by counsel for the petitioners all that is stated that "even though the Government constituted the above said expert committee, the Government is not bound to accept all the suggestions of the said committee". Petitioners also pointed out that from what is stated in paragraph 20 of the affidavit, it was only on account of the objections from the State Transport Undertaking and its employees, deviations were made from the notification dated 9-5- 2007, ignoring the recommendations of the expert committee.

11. I heard the counsel for the petitioners, the learned Govt. Pleader and the Standing Counsel for the K.S.R.T.C.

12. The relevant statutory provisions which are required to be noticed are those contained in Chapter VI of the Act and the Rules 236 to 248 of the Kerala Motor Vehicles Rules. Sections 99 and 100 of the Act being relevant for the disposal of this case, are extracted below for reference:

Section 99: Preparation and publication of proposal regarding road transport service of a State Transport undertaking: (1) Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that the 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 Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant

particulars respecting thereto and shall publish such proposal in the Official Gazette, of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

(2) Notwithstanding anything contained in Sub-section (1), when a proposal is published under that sub Section, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue or till the date of final publication of the scheme u/s 100, whichever is earlier.

Section 100: Objection to the proposal: (1) On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the are or route which is to be covered by such proposal any person 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 such proposal.

(3) The scheme relating to the proposal as approved or modified under Sub-section (2) shall then be published in the Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette 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 the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under Sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under Sub-section (1), the proposal shall be deemed to have lapsed.

13. A reading of Section 99 shows that where any State Government 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 the road transport services in general or any particular class of such service in relation to any area or route or its portion should be run and operated by the State Transport undertaking, whether to the exclusion, complete or partial, of

other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government deems fit.

14. In exercise of the rule making power of u/s 107, the rules in Chapter VI of the Kerala Motor Vehicle Rules providing for special provisions relating to State transport undertakings have been framed by the State Government. Rule 236 provides that every proposal framed u/s 99 of the Act shall be in Form "A" and shall be published in the Official Gazette and in not less than one daily newspaper in the regional language circulating in the area involved. It is also provided that a copy of every scheme proposed to be published in the Gazette shall be forwarded to the State Transport Undertaking, to the Secretary of the State Transport Authority and the Regional Transport Authority concerned. Form A appended to the Rules gives a schedule containing as many as 19 columns and specify the details to be incorporated in a proposal.

15. Once draft is published in the manner as stated above, Section 100 of the Act comes into play and in terms of Section 100(1), on the publication of any proposal in the manner provided therein, any person may, within thirty days from the date of its publication in the Official Gazette, file objections before the State Government. The manner in which objections are to be filed is provided under Rule 237 and it provides the particulars to be given in the objections, which shall be filed before the Secretary to Government, Public Works and Transport Department, and simultaneously copies shall be forwarded to the State Transport Undertaking, the State Transport Authority and the Regional Transport Authority concerned. Once objections are filed in the manner as provided in Section 100(1) of the Act and Rule 237 of the K.M.V. Rules, the State Government is to consider the same in terms of Section 100(2). Rule 238 provides that the Chief Minister or any other Minister nominated by him or any officer nominated by the Government in this behalf, shall be the authority to consider the objections and hear the objectors. Clause (b) of the Rule provides that the representatives of the State Transport Undertaking and the objectors or their authorised representative, if they so desire, shall be heard. The place, date and time of hearing shall be communicated to the concerned persons at least fourteen days before the date of hearing.

16. Once objectors are heard, it is for the State Government to consider and approve the proposal, with or without modification. Once approval is accorded, Section 100(3) and Rule 239 provides the manner of publishing the approved scheme which shall be notified in Form B in the Official Gazette and in one daily newspaper in the same manner as provided in Rule 236. Section 100(3) further provides that once publication is effected as above, the scheme shall become

final on the date of its publication in the gazette 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.

17. The aforesaid being the relevant statutory provisions, I shall proceed to examine the judicial precedents where the courts have dealt with the corresponding provisions in Sections 68C and D of the Motor Vehicles Act, 1939.

18. In the context of the scheme notified by the Government of Andhra Pradesh the Supreme Court had held in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, that the enquiry that is contemplated u/s 68 is quasi judicial in nature and it imposes a duty on the State Government to decide judicially while approving or modifying the scheme. The relevant portion of paragraph 21 of the judgment is extracted below for reference:

Applying the aforesaid test, let us scrutinize the provisions of Sections 68-C and 68-D and the relevant rules made under the Act to ascertain whether under the said provisions the State Government performs a judicial act or an administrative one. Section 68-C may be divided into three parts (1) The State Transport Undertaking should come to an opinion that it is necessary in public interest that the road transport service in general or any particular class of such service in relation to any area or route or portion thereof should be run or operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, (ii) it forms that opinion for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, and (iii) after it comes to that opinion, it prepares a scheme giving particulars of the nature of the services proposed to be rendered, area or route proposed to be covered and such other particulars respecting thereto as may be prescribed and causes it to be published in the Official Gazette. The section; therefore, makes a clear distinction between the purpose for which a scheme is framed and the particulars of the scheme. To state it differently, though the purpose is to provide an efficient adequate, economical and co-ordinated road transport service in public interest, the scheme proposed may affect individual rights such as the exclusion, complete or partial, of other persons or otherwise, from the business in any particular route or routes. u/s 68-C, therefore, the State Transport Undertaking may propose a scheme affecting the proprietary rights of individual permit holders doing transport business in a particular route or routes. The said proposal threatens the proprietary right of that individual or individuals. u/s 68-D read with Rules 8 and 10 made under the Act, any person affected by the aforesaid proposed scheme may file objections within the prescribed time before the Secretary of the Transport Department. Under the said provisions, the State Government is enjoined to approve or modify the scheme after holding an enquiry and after giving an opportunity to the objectors or their representatives and the representatives of the State Transport Undertaking, to be heard in the matter in person or through authorised

representatives. Therefore, the proceeding prescribed is closely approximated to that obtaining in courts of justice. There are two parties to the dispute. The State Transport Undertaking, which is a statutory authority under the Act, threatens to infringe the rights of a citizen. The citizen may object to the scheme on public grounds or on personal grounds. He may oppose the scheme on the ground that it is not in the interest of the public or on the ground that the route which he is exploiting should be excluded from the scheme for various reasons. There is, therefore, a proposal and an opposition and the third party, the State Government is to decide that *lis* and *prima facie* it must do so judicially. The position is put beyond any doubt by the provision in the Act and the Rules which expressly require that the State Government must decide the dispute according to the procedure prescribed by the Act and the Rules framed there under, viz., after considering the objections and after hearing both the parties. It therefore appears to us that this is an obvious case where the Act imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme proposed by the Transport Undertaking.

19. In *Malik Ram Vs. State of Rajasthan*, the Supreme Court followed the judgment in *Nageswara Rao's* case and paragraph 6, to the extent relevant, reads as follows:

The next question is the scope of the hearing u/s 68-D(2). The officer has held that the scope of the hearing is confined only to hearing of arguments and no more, and that is why he rejected the prayer of the appellant for leading evidence, whether oral or documentary. Now it has been held by this Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, , that a State Government Acts as a quasi-judicial tribunal when giving a hearing u/s 68-D. The purpose of the hearing is that the State Government has to satisfy itself that the opinion of the State Transport undertaking formed u/s 68-C, namely that the scheme is for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, is correct. The objections are all made to show that the scheme does not provide for an efficient, adequate, economical and properly co-ordinated road transport service. In order therefore to arrive at the conclusion that the draft scheme provides for a transport service of this nature, the State Government as a quasi-judicial authority may require materials to come to that conclusion.

20. Both the above judgments and the subsequent judgments rendered by the Apex Court were followed by a Division Bench of this Court in *C.C. Transport Co. v. State of Kerala* 1977 KLT 661 where it has been held as follows:

The process involved in notifying and approving a scheme of nationalisation is a quasi-judicial process. A hearing and determination of the objections to the notified scheme in an objective fashion is a prime necessity. An approval of the scheme after hearing the objections is a sufficient indication in itself of an objective assessment and determination of the objections. The order approving a

nationalised scheme symbolises, and can well be regarded as the quintessence of, a determination of the objections. How far the stamp of approval can be a substitute for a speaking order spoken of in some of the decisions as an elementary requirement of a quasi-judicial process, may be an interesting academic pursuit; but on the facts, and on the state of the authorities, we think it should cause little difficulty. So understood, we are of the view that there has been no violation of the statutory provisions in this case and that the order approving the scheme is not vitiated by any illegality.

21. Interpreting Section 99 of the Motor Vehicles Act, 1988, in its judgment in *Jagdish Singh Vs. Jagir Chand and Another*, the Supreme Court has held:

From the aforesaid section, it is apparent that before framing the scheme, the State Government should arrive at a conclusion that:

(1) for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service:

(2) it is necessary in the public interest;

(3) that the road transport services in general or in particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertakings;

(4) to the exclusion, complete or partial of other persons or otherwise;

(5) the State Government is required to formulate a proposal regarding the scheme giving particulars;

(a) nature of services proposed to be rendered,

(b) the area or route proposed to be covered and;

(c) other relevant particulars respecting thereto.

(6) and the State shall publish such proposal

(a) in the Official Gazette of the State formulating such proposal;

(b) in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme; and

(c) In such other manner as the State Government formulating such proposal deem fit.

Main purpose of the aforesaid section is to have some routes/area reserved for the State Transport Undertaking, that too, for the purpose of providing an efficient, adequate, economical and properly co-ordinated Road Transport service. Further, such scheme must be in public interest, that is to say, larger number of buses operating on different routes for the convenience and benefit of travelling public at a cheaper rate. In such a scheme, some routes can be reserved exclusively or partially for the State Transport Undertakings".

22. Read in the context of the aforesaid judgments rendered by the Apex Court and this Court it can be concluded that while exercising its power u/s 99 of the Act the State Government should first come to a conclusion that it is necessary in 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. It should form such opinion for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service. Once opinion is formed as above, a proposal is prepared giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars in respect thereof and such proposal shall be published in the official gazette. Since the proposal thus notified affects the proprietary rights of individual permit holders engaged in transport business, the statute provides that any person affected by the aforesaid proposed scheme may file objections in the manner prescribed. Once objections are filed the State Government is enjoined to hold an enquiry and give an opportunity to the objectors or their representatives and the representatives of the State transport undertaking to be heard in the matter and thereafter approve the scheme with or without modifications and that is notified in the Gazette. The procedure prescribed, is comparable with what that is obtaining in the courts of law with two parties to the dispute, the State transport undertaking on the one side and the other side, citizens who have the right to object to the proposal on public or personal grounds or on the ground that it is not in the interest of the public or that the route which he is operating should be excluded from the scheme for the reasons that he may have. It is for the State Government to decide that dispute and it must do so in a judicial manner.

23. Courts had occasion to consider the necessity of complying with the principles of natural justice while approving and notifying a scheme under the Act. The question as to whether the Government can approve what is foreign to a proposal notified u/s 100(1) also has engaged attention of the courts. One such judgment is that of the Division Bench of the Madhya Pradesh High Court in Baluram Daluram and Others Vs. The State of Madhya Pradesh and Others, , to the extent it is relevant reads as follows:

Apart from this, the Government can approve or modify only the scheme framed by the State Transport Undertaking in terms of Section 68-C. The Government have no authority to approve something not included in the scheme on the hypothesis that by implication it shall be deemed to have been included in the scheme. No doubt the State Government can totally reject a scheme. But it cannot under the authority of approving and modifying the scheme claim the power of approving something which is not proposed at all.

24. Similar view has been expressed by a Division Bench of the Andhra Pradesh High Court in Andhra Pradesh State Transport Corporation Vs. R. Maheshwari and

Others, in so far as it is relevant, reads as follows:

As per Sub-section (2) the State Government, may approve the scheme as published u/s 68-C or modify after considering the objections. The word "modify" in the said Sub-section means "to change slightly or partially in character". The State Government when it approves the scheme u/s 68-D of the Act presents no difficulty. But when it comes to a question of modification of the scheme, the modification quite obviously could only be made, having regard to the objections filed. The objections filed can only be in relation to the scheme published u/s 68-C. It is plain that no other objections can be entertained by the State Government. It is quite patent that the scheme published u/s 68-C does not make any reference to an inter-State route or inter-State operators. The impugned Clause in the note was added in the scheme published by the Government u/s 68-D(3) of the Act. That impugned clause which is appended to the note at the end of the published scheme added a condition that the permit holders of stage carriages on the inter-State routes shall not pick up or set down intra-State passengers on the notified route. But for this condition introduced in the scheme published u/s 68-D, the inter-State operators plying along the notified route could pick up or set down passengers. With regard to the condition imposed in the impugned clause, no objections could have been filed by the inter-State operators, as the scheme published u/s 68-C made no reference to any inter-State route. Their objections, if any, in that respect could not have been made. Some of the inter-State route permit holders are also intra-state permit holders. Their objections would only have been in relation to the intra-State route which is the notified route and not of something which was never found in the scheme published u/s 68-C of the Act. Thus there can be no doubt that the introduction of a new condition in the note appended to the scheme published u/s 68-D was made without hearing the writ petitioners, who are violated and the conditions introduced behind the back of those who were not heard cannot be allowed to stand.

25. A reading of the aforesaid judgments, make it clear that the power of modification available to the Government u/s 68C of the 1939 Act or Section 100(2) of the 1988 Act, only enables it to change the proposal slightly or partially in character or to change somewhat the form or qualities. It has been held that such modification can be made only in relation to the proposal published and that introduction of a new provision in the approved scheme without notice to the affected parties, is in violation of the principles of natural justice and that any condition so introduced, cannot be sustained.

26. It was canvassed before me that the law as applicable to Section 23 of the General Clauses Act is equally applicable to a draft published in terms of Sections 99 and 100 of the Act. Relying on the decision in *Maula Bux and Others Vs. The Appellate Tribunal of State Transport Authority and Others*, it was contended that once a draft is published, it is open to the Government to make the scheme with or without changes in the published draft subject to the condition that the

scheme so made is not foreign to the draft.

27. Relying on the judgment of the Supreme Court in *The Municipal Corporation Bhopal, M.P. Vs. Misbahul Hasan and Others*, it was argued that the power to approve includes power not to approve the scheme. *Sindhi Sahiti Multipurpose Transport Cooperative Society Ltd. Vs. State of Madhya Pradesh and Others*, was relied on to contend that it is open to any aggrieved person to challenge a scheme on the ground that it is not a valid scheme as required by the provisions of the Motor Vehicles Act. Since the position canvassed by the counsel, being settled and as the learned Govt. Pleader also did not contend to the contrary, I do not consider that a detailed discussion on these aspects is necessary.

28. In the aforesaid background what is required to be examined is whether the scheme notified by the Government by notification dated 6-5-2008 is a valid one. As can be seen from Ext. P4 proposal, in terms of Clause 4 thereof, regular and temporary permits existed on or prior to 18-4-2007 were to continue as such. Similarly, as per Clause 19 of Ext. P4, replacement by KSRTC was contemplated only by issuing a notification in the official gazette and that too when KSRTC could operate such route exclusively. The contention is that since the proposal in Ext. P4 saved permits existing upto 18-4-2007 and as replacement was only by a notification and that too, as and when the KSRTC could operate exclusively on the notified routes, petitioners were not aggrieved by Ext. P4. It was while so by Ext. P5 the approved scheme was published which provided that only the permits issued prior to 9-5-2006 will be allowed to continue for the time being and that such permits will be renewed only if the KSKTC is not willing to provide substitute bus in its vacancy. It is pointed out that Clause 19 of Ext. P5 gave freedom to KSRTC to replace any existing private permit in the notified route on its expiry by providing substitute vehicles on a selective basis. The basis of last come first go provided in Clause 19, it is argued, is therefore meaningless.

29. Comparing the provisions of Clauses 4 and 19 of Ext. P4 with the corresponding clauses of Ext. P5, it is pointed out that Ext. P5 makes substantial departure from Ext. P4 at least in the following respects: (1) While Clause 4 of Ext. P4 permitted continuance of permits that existed prior to 18-4-2007 Ext. P5 provided continuance only for permits existed prior to 9-5-2006 and that also for the time being. (2) As per Clause 4 of Ext. P5 even those permits which were in existence as on 9-5-2006 will be renewed only if KSRTC was unwilling to provide substitute bus in the vacancy. (3) Clause 19 of Ext. P4 provided replacement of private permits by notification and only when KSRTC was able to operate exclusively on such routes. (4) The corresponding provision in Ext. P5 gave freedom to KSRTC to replace any existing private permit of its expiry on the basis of last come first go.

30. Highlighting the variation in Clauses 4 and 19 of Exts. P5 as compared to those in Ext. P4, it is argued that fixation of 9-5-2006 and by making renewal conditions on the KSRTC's unwillingness to provide substitute bus in the vacancy and giving it freedom to replace any permit, the 1st respondent has exceeded its

power u/s 100(2) of the Act. It is contended that the provision in Clauses 4 and 19 of Ext. P5 were introduced without notice to the affected operators and that as these clauses were not included in the proposal they did not have any opportunity to file their objections to the said provisions and hence natural justice is violated. To the contrary, the learned Govt. Pleader asserted that the 1st respondent was exercising its power of approval with modification conferred on it u/s 100(2) of the Act, while modifying Ext. P4 and finalising the scheme as per Ext. P5 notification.

31. On appreciating the rival contentions, I am inclined to agree with the counsel for the petitioners that Clauses 4 and 19 of Ext. P5 notified scheme, substantially varies from the proposal contained in Ext. P4. It is also true that while in Ext. P5 even the restricted right for renewal of permit is available only to those permits issued on or prior to 9-5-2006, the proposal in Ext. P4 permitted renewal of permits existed as on 18-4-2007. This necessarily means that at least a section of the permit holders, viz., those who were issued permits during 9-5-2006 and 18-4-2007, did not have notice of the scheme as notified and their right of renewal has been denied without giving them an opportunity to file their objections and make their representations as provided in Section 100 of the Act. Similar is the case with Clause 19 also. Clause 19 of Ext. P4, contemplated replacement by notification and that too, only when KSRTC could operate the route exclusively. In the approved scheme, this has been changed completely.

32. This action of the State Government is beyond its power u/s 100(2) of the Act and is in violation of the principles of natural justice. True, the Government have the power to approve the scheme with modifications, which includes the power not to approve the scheme also. In this case, the power asserted by the learned Govt. Pleader is the power to approve the scheme with modifications. As already noticed the power to approve with modification does not confer on the Government the power to introduce something which is foreign to the proposal notified for objections. The word "modification" has to be understood as enabling the Government to make variations of a provision already incorporated in the proposal and under the power of modification may be the Government can drop a proposal or make variations in the form or quality. As against this, under the cover of its power of modification, the 1st respondent has introduced substantially different clauses in the notified scheme, the details of which have already been adverted to.

33. As already noticed by me, a comparison of the clauses contained in the notification dated 9-5-2007 and the notification dated 6-5-2008 shows that there are substantial changes in Clauses 4 and 19. As argued by the learned Counsel for the petitioners in W.P.(C) No. 17813/08, the Apex Court had directed the parties to discuss among themselves to arrive at a workable solution, which led to the issuance of the Govt. Order dated 31-12-2005, which finds reflection in the draft notification dated 9-5-2007, these are valid contentions which could have been urged by the petitioners, had the Government notified Clauses 4 and

19 of the notification dated 06-05-2008, in the draft published on 9-5-2007. Though the Government which had appointed the expert committee was not bound by its recommendations still it must have valid reasons for ignoring the recommendations. No reason whatsoever is forthcoming in the counter affidavit. That apart the Government also did not make it known to the petitioners that it proposes to depart from the recommendations, while finalising the scheme by notification dated 6-5-2008. In my view, these proposals ought to have found a place in the draft notification and having not done, the petitioners did not have any opportunity to raise their objections to the provisions contained in the notification dated 6-5-2008. For this reason also, Clauses 4 and 19 of the notification dated 6-5-2008 deserves to be invalidated.

34. In my view, the State exceeded its powers by notifying the approved scheme with provisions which are foreign to the proposals notified inviting objections. I therefore hold that Clauses 4 and 19 of Ext. P5 are in excess of the powers conferred on the 1st respondent u/s 100(2) of the Act and that these provisions were introduced in violation of the principles of natural justice. The aforesaid provisions of Ext. P5 dated 6-5-2008 necessarily will have to be set aside and I do so.

35. However, it is clarified that this judgment will not stand in the way of the respondents in publishing a fresh draft and proceed with the matter afresh. It is also clarified that I have not examined the merits of the various other contentions that have been raised by both sides and I have open these contentions which can be urged as and when draft notification is published by the Government.

36. Applications for permits, regular or temporary, will be considered by the authority concerned in the light of this judgment and as expeditiously as possible, and at any rate within 8 weeks of production of a copy of this judgment.

37. Writ petitions are disposed of as above.