

(1985) 02 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 8597 of 1984 etc.

Vijayanarasimha Reddy

APPELLANT

Vs

Joint Transport Commissioner and Secretary, State Transport
Authority, Himayatnagar, Hyderabad

RESPONDENT

Date of Decision : 08-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 57, 62, 68F, 68F(IC)

Citation : AIR 1985 AP 361

Hon'ble Judges : P.A. Choudary, J;Lakshmana Rao, J

Bench : Division Bench

Advocate : M.C. Ramana Reddy, for Impleaded Party, R. Venugopala Reddy, P. Anil Kumar Reddy and P. Rajagopala Chary, for the Appellant; Govt. Pleader and C. Ananda Rao, for the Respondent

Judgement

P.A. Choudary, J.—In all these cases the petitioners are motor transport operators. They have filed these writ petitions seeking issuance of Writ of Mandamus to compel the State Transport authorities to consider their applications filed by them for grant of temporary permits u/s 68-F(IC) of the Motor Vehicles Act (hereinafter referred to as "the Act"). These transport authorities alone had been made parties-respondents to these petitions. But, in none of these writ petitions the Andhra Pradesh State Road Transport Corporation (hereinafter referred to as "the Act"). These transport authorities alone had been made parties-respondent to these petitions. But, in none of these writ petitions the Andhra Pradesh State Road Transport Corporation (hereinafter referred to sometimes as "the APSRTC") was made a party and in none of these cases the petitioners had made any allegations to the effect that the competent transport authorities had formed nay opinion u/s 68-F of the Act to the effect that it was necessary in the public interest to increase the number of motor vehicles operating on the area or route or portion covered by any draft notification published under S.68C of the Act. Just a few days before these wits

had been filed into this court, the petitioners had applied to the transport authorities for grant of temporary permits under S.68-F(IC) of the Act and they are now asking that this court should direct the authorities to consider those applications.

2. The applications made by the petitioners for grant of temporary permits are of two types. In some cases, the petitioners are asking for grant of temporary permits on routes draft notified under S.68-C while in other cases their demand for grant of temporary permits is for routes which were not draft notified, but were artificially formed and created by them out of two or more draft notified routes.

3. It may be mentioned that the petitioners had, at the admission stage itself, obtained orders from this Court directing the transport authorities to grant temporary permits to them, pending disposal of their writ petitions and that accordingly the petitioners had obtained transport permits and had been running their vehicles till we have vacated the interim orders.

4. These writ petitions are strongly opposed by the APSRTC and also by rival private operators, both of whom had impleaded themselves in some of these writ petitions as party respondents. Some of these matters when first came before our learned brother Ramaswamy J. the learned Judge had directed them to be posted before a Division Bench for final hearing. In doing so, the learned Judge framed three questions for consideration. Either in the matter of reliefs asked for or in the nature of facts stated there is no difference worth mentioning between one writ petition and the other.

5. As the facts are more or less the same in all these writ petitions, we set out in this judgment the facts as stated in one of the writ petitions chose at random.

6. The petitioner in W.P.No.1984 is one Vijayanarasimha Reddy. The affidavit filed in support of the allegations contained in the above W.P.No.8597 of 1984 was however sworn to be open by Chandrasekahara Reddy (not by Vijayanarasimha Reddy). Those facts sworn to are the following: The Andhra Pradesh State Road Transport Corporation had published several schemes in Nellore District and that Scheme Nos. 407/77 and 412/77 related to Gangunta to Atmakur via Ananthasagaram and Atmakur to Badwel respectively and that the travelling needs covered by the draft schemes had not been fulfilled so far by providing adequate transport facilities and that the writ petitioner filed an application before the Joint Transport Commissioner and the Secretary, state Transport Authority, Himyatnagar, Hyderabad on 24-5-1984 for the grant of temporary permit under S.68F(IC) of the Act and that no orders were passed by the granting authorities on the said application of the petitioner and that if the granting authority had considered the application and granted a permit to the petitioner the travelling public would be very much benefited with the additional transport facilities. The petitioner also stated that the route for which he filed application under S.68-F(IC) of the Act was a route which was carved out of the

routes of the above two draft schemes VIX. Gangunta to Atmakur via Ananthasagaram and Atmakur to Badevel. In other words, the route for which the petitioner is asking for the grant of a temporary permit under S.68-F(IC) of the Act is not a route which has draft notified by the APSRTC under S.68-C (IC) of the Act. It is an imaginary route which was artificially created by the petitioner. He prayed this court to issue a writ of mandamus directing the transport authorities to consider and grant a temporary permit under S.68-F(IC) of the Act on the above carved out route of Atmakur to Badvel viz., Sangunta and Ananthasagaram. The petitioner also obtained interim direction from this court at the stage of admission itself directing the transport authorities to grant temporary permits to the petitioner pending disposal of his writ petition. That interim relief which transcended the scope of the relief asked for in the main writ petition was fully made use of by the petitioner until we had vacated it,

7. The APSRTC which is a State Transport undertaking within the meaning of Chapter IV-A of the Motor Vehicles Act, had prepared and published u/s 68-C of the Act several schemes for running their buses on those routes to the exclusion of private operators. Those schemes are still pending considerations before the State Government. The petitioners had filed applications for grant of temporary permits under S.68F (IC) of the Act. These writ petitions have been filed by the private operators seeking writs of mandamus to direct the transport authorities to consider their applications filed for grant of temporary permits under S.68-F(IC) either on the routes which were draft notified by the APSRTC under S.68-C of the Act or on some other routes which the petitioners had themselves artificially created by combining portions of two or more draft notified routes.

8. To examine the questions that arise for consideration in these cases it is necessary to notice the provisions of Chapter IV-A of the Act.

9. The Motor Vehicles Act seeks to control and regulate the rights of persons to ply their transport vehicles on public routes. That regime of regulation is conceived primarily for the benefit, convenience and safety of the travelling public, but without causing total detriment to the rights of private operators to ply their vehicles on the public routes. The original scheme of the Act is to protect the interests of travelling public through the method of granting permits to private operators. For that purpose the Act has set up an elaborate machinery dealing with the permits are for granting, varying or withholding or cancelling transport permits to private operators. In the main the working of the Act is left to the interplay of the conflicting interests of the private operators. While the Act provides for rather summary procedure for grant of temporary permits, it provides for an elaborate procedure for grant of these transport permits the private operators should not be excluded. The original scheme was based on the Mandeville's theory of "the pursuit of individual advantage is admirably connected with the universal good of the whole." Both ideology and experience taught the law maker differently. It was believed in the early years of our

Republic that it might sometimes become desirable and even necessary to exclude the private operators from the transport field and for the State to assume the direct responsibility for providing efficient transport facilities to the travelling public. But the exclusion of private operators from the transport field required specific constitutional sanction and corresponding amendments made to the existing provisions of the Motor Vehicles Act. Accordingly the Constitution (First Amendment) Act of 1951 was enacted, later followed by the Union Act No.100 of 1956 which contains Chapter -IVA. These provisions authorise any State Transport undertaking to run its own vehicles on notified routes excluding private operators either wholly or partially so that the interests of the travelling public may be better served. These exclusionary provisions contained in Chapter IV-A of the Act are the hallmarks of the new law, the significance of which we regret to say is sometimes lost sight of. We should note that the purpose of Chapter IV-A of the Act is not to regulate the rights of the private operators in the matter of granting or withholding or varying their transport permits, but to provide for an elaborate procedure that should be followed in excluding the private operators. Law requires that the procedure laid down by Chapter IV-A of the Act should be followed by any transport undertaking which is proposing to run its own transport vehicles exclusively on any routes excluding private operators. Under this procedure, the status of private operators recognised by law is reduced to lowest minimum and it is also made transitory. On the other hand the interests of the State Transport undertaking is upgraded and given total primacy. Under this changed arrangement the first step for the State transport undertaking to take to eliminate the private operators is to publish a scheme under S.68C of the Act which is part of the aforesaid Chapter IV-A of the Act. Now, section 68-C of the Act lays down that where any State transport undertaking is of the opinion that for the purposes of providing efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest, that 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 and operated by the State Transport undertaking whether to the exclusion complete or partial of other person or otherwise, the State transport undertaking any prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed were covered and such other particulars respecting there may be prescribed and shall cause every scheme to be published in the official Gazette and also in such other manner as the State Government may direct. The purpose of section 68-C of the Act is that the State Transport undertaking acting in the interests of travelling public should prepare schemes giving particulars and nature of transport services it proposes to run in specified areas or routes by excluding private operators either totally or partially and publish the same. The schemes so published are in the form of proposals and those proposals are meant to be considered by the State Government, these proposals are called draft schemes. These draft schemes once approved by the State Government become law governing the running of the services on those routes. Chapter IV-A not only authorises the State

Transport undertaking to publish those proposals and for the State Government to consider them, but it also provides the procedure. The State Government cannot give its approval to the proposals without considering the opposition to those proposals of the State transport undertaking both from the private operators and from the travelling public. Chapter IV-A had provided for the classic triangular type of quasi-judicial procedure. It becomes therefore necessary for the State Government to receive and consider objections or representations from the public and also from the private operators and the State transport undertaking which has propounded the draft scheme and to examine the viability and the desirability of the draft schemes in the light of the above representations and objections. The State Government then decides upon giving its approval to the draft schemes in whole or in part. When a draft scheme is approved and published in the official Gazette it is called the approved scheme. Thereafter, no one can run any vehicle on the routes covered by the approved schemes except in accordance with and as permitted by the approved scheme.

10. All these are plainly simple although sometimes their simplicity itself may turn out to be delusive to those who see merely the trees for wood. The question with which are concerned related to a stage subsequent to the publication of draft schemes but anterior to their approval by the State Government. Now because of the reason that following the above procedure which chapter IV-A of the Act requires to be followed by the State Government in approving draft schemes is time consuming, it has become necessary for the law to provide a machinery to meet the needs of the travelling public on the routes draft notified. The law is, that once a draft scheme has been published by the State Transport undertaking under S.68C of the Act, the level of transport services then existing on the routes covered by draft schemes will get totally frozen with the result that the transport services on those draft notified routes can neither be varied nor increased so as to meet the increased travelling needs on the draft notified routes till the draft scheme is approved by the State Government (See Mohd. Yosuf Bashav. APSRTC, 1979 (2) Andh Pra WR (HC) 403. The status quo thus created by law as a step in the implementing process of Chapter IV-A can be the cause of concern and distress to the interests of the travelling public during the period of when the draft scheme was under the consideration of the State Government. In order to obviate these difficulties of the travelling public during that period, S.68-F of the Act authorises the competent transport authorities to grant temporary permits that might be required to meet the increased needs of the travelling public on the routes draft notified, but not yet approved by the State Government. In order to meet the needs of the travelling public the law permits grant of temporary permits even to private operators though only as a last resort. Accordingly S.68-F(A) of the Act, authorises the State transport undertaking to make applications for grant of temporary permits on draft notified routes. But even here, Section 68-F echoing the exclusionary ethos of Chapter IV-A of the Act makes it obligatory for the competent transport authorities to offer the temporary permits it might propose to grant first to the State transport

undertaking. This is a priority to which the State Transport Undertaking is entitled to by reason of Sec.68-F of the Act. Of course, where the State Transport undertaking does not choose to run the vehicles temporary permits are permitted to be granted to private operators. But the point is that under Chapter IV-A of the Act, a private operator will be entitled to get temporary permits under S.68F(I-C) of the Act, a private operator will be entitled to get temporary permits under S.68-F(I-C) of the Act, only in the last instance the State Transport undertaking declines to apply for the grant of those transport permits. Even then, S.68-F recognises that the temporary permits granted for a private operator may have to be subjected to conditions. The competent transport authorities are therefore authorised to impose conditions upon the temporary permits granted to private operators which cannot be done in case where those temporary permits are granted to the State Transport undertaking. It is not all. S.68F of the Act also provides that while the temporary permits granted to a State transport undertaking will last till pucca permits are granted to it in pursuance of the provisions of the approved scheme or until the expiration of one week from the date on which the State Governemnt makes an order whether approving or modifying the draft scheme, a temporary permit that may be granted to a private operator should become ineffective on the mere issue of a permit to a State transport undertaking in respect of that area or route or portion. In one case the running of the vehicles by the State Transport undertaking can be continuous while in the other it should be temporary. Clearly Chapter IV-A almost exiles the private operator from the Kingdom of the nationalised routes.

11. For our purposes, it is important to notice that under the scheme of Chapter VI-A of the Act unless the competent transport authority first forms an opinion that in the public interest it was necessary to increase the number of vehicles operating in that area or route which was draft notified, law would not allow the granting of any temporary permit under S.68F of the Act either to the State transport undertaking or to any private operator. In other words without formation of opinion as the need to increase number of buses in draft notified routes, no cause of action arises for a private operator to seek a mandate for the grant of temporary permit under S.68-F(IC) of the Act. In view of the fact that in none of these cases the p4etitioners were claiming that any transport authority had formed any opinion about the need to increase the number of operating buses, we will have to examine the question whether in the absence of formation of an opinion by the transport authorities under S.68-F the petitioners are entitled to get any relief in these cases.

12. As some of the petitioners had applied as in W.P.No.8597/84 for grant of temporary permits, not on any draft notified route but on routes which were formed by the petitioners themselves out of two or more draft notified routes, we have to examine the question whether to such applications the provisions contained in S.68-Fof the Act can have any application.

13. In the light of the arguments advanced in these cases a question arises for consideration regarding the proper procedure which the competent transport authorities should follow in granting temporary permits and in granting priority to the State transport undertaking which Chapter IV-A of the Act gives it. The question whether the APSRTC is a necessary and proper party to these proceedings also requires to be decided. The final question which we have to consider in these cases, as it has been framed and referred to us by Ramaswamy K. is "Whether the interim directions could be granted where the relief sought for is also the same as in the main writ petition without deciding the merits of the case and giving findings thereon."

14. We have already noted that under Chapter IV-A a private operator can get a temporary permit only under S.68F (IC) and no such permit can be granted without the reaching of requisite satisfaction by the competent transport authority as to the need to increase the number of vehicles operating on the notified route. In other words, arriving at such satisfaction is a condition precedent for the granting of any temporary permit under S.68-F(IC) of the Act. The language of S.68-F(IA) of the Act is clear on this point. S. 68F(1A) of the Act reads thus:

"Where any scheme has been published by a State Transport undertaking under S.68-C, that undertaking may apply for a temporary permit, in respect of any area or route or portion thereof specified in the said scheme, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme, and where such application is made, the State Transport authority or the Regional Transport Authority, as the case may be, shall, if it is satisfied that it is necessary to increase in the public interest, the number of vehicles operating in such area or route or portion thereof, issue the temporary permits prayed for by the State transport undertaking."

The above language of section 68-F(IA) of the Act would show that unless the competent transport authorities are satisfied that it is necessary to increase in the public interest the number of vehicles operating in a notified area or route or portion, temporary permits cannot be granted even to the State transport undertaking. In *Abdul Basheer Vs. T. Veeranna*, a Division Bench of the Karnataka High Court interpreting S. 68-F of the Act has held, that the reaching of satisfaction by the transport authorities as to the need to increase the number of buses on the draft notified routes is a condition precedent for the exercise of the power to grant temporary permits under S.68-F of the Act. The Karnataka High Court interpreting S.68-F of the Act has held, that the reaching of satisfaction by the transport authorities as to the need to increase the number of buses on the draft notified routes is a condition precedent for the exercise of the power to grant temporary permits under S.68-F of the Act. The Karnataka High Court observed as follows (at p.88):

"It is the essence of the matter that the state or the Regional Transport

Authority, as the case may be, should, in the first instance, examine under sub-section (1A) the need having regard to the interests of the travelling public. It is only if the authority is satisfied that the existing vehicles operating on the area or route or portion thereof, are no adequate and that it is necessary to increase the number of vehicles, that the question of considering the request of the State Transport undertaking arises."

The decision of the Supreme Court in Smt. Praveen Ansari and Others Vs. State Transport Appellate Tribunal, Lucknow and Others, on which the petitioners had placed strong reliance was considered by the above mentioned judgment of the Karnataka High Court as an authority for holding that the prior satisfaction of the transport authorities regarding the need to increase the number of buses is a condition precedent for the grant of temporary permits under S.68F of the Act. Thus both in principle and on authority we hold that no temporary permit can be granted under S.68-F of the Act except when the transport authorities reached prior satisfaction required by Sec. 68-F(IA) of the Act.

15. In Praveen Ansari's case, the need for an many as seven extra vehicle was regularly established by the satisfaction of the competent transport authority. But the State Transport undertaking had applied only for the grant of three out of those seven routes. The Supreme Court had construed the failure of the State Transport undertaking to apply for the remaining four routes as an act of waiver on the part of the State Transport undertaking giving up its right to apply for temporary permits. It was in those circumstances, the Supreme Court directed that the applications of the private operators for those four routes should be considered by the competent transport authorities and granted to eligible private operators. Nowhere in that case the Supreme Court hinted that the ascertainment of the need for plying increased number of buses on the draft notified routes and arriving at the requisite satisfaction by the transport authority can be dispensed with; nor did the Court rule that it is enough that such satisfaction is reached by the Court. We accordingly hold that it is a necessary statutory condition for the grant of temporary permits under S.68F that the competent transport authorities are first satisfied about the need to ply additional number of buses on draft notified routes. As it is not in dispute that the transport authorities had not reached the requisite satisfaction in any one of these matters it should be held that the transport authorities are themselves without power to grant temporary permits either to the APSRTC or to the private operators. In those circumstances, we hold that the petitioners' writ petitions disclose no cause of action and that the petitioners' writ petitions filed for consideration of their applications for the grant of temporary permits under S.68F of the Act should be summarily rejected.

16. We are also of the opinion that the writ petitions falling under the category of W.P.No. 8596/84 where the petitioners had applied for grant of temporary permits on routes not draft notified by the State transport undertaking, but carved out by the petitioners themselves from and out of two or more draft

notified routes deserve to be doubly dismissed. Such writ petitions should fail on the extra ground that S.68F of the Act can never have any application to any carved out routes. In our opinion, the provisions of S.68-F(IC) of the Act would apply and can apply only to the routes which had been draft notified by the State Transport undertaking. A draft notified route which is proposed to be opened or run by the State Transport undertaking is one which is conceived by a State Transport undertaking on the grounds of public convenience, efficient transport etc. it is such a route which is required to be published by the State transport undertaking under S.68-C of the Act as its proposal to run its buses to the exclusion of private operator. The needs of the travelling public are clearly left to be decided by Chapter-IVA by the State transport Undertaking and not by the private operators. It may be noted that opening of a route even under the general provisions of the Act is the sole concern of the transport authorities . The theory of carved out route gives power even to open a route to a private operator under Chapter IV-A where he is almost banned. This cannot be right. It may be noted that under S.68-F(IA) of the Act, the State Transport undertaking has alone been given power to apply for the grant of temporary permits and that too only in respect of any area or route or portion thereof specified in the draft scheme for the period intervening between the date of publication of the draft schemes and the date of publication of the approved or modified schemes. The language of Section 68-F(IA) would clearly show that no temporary permit can be granted u/s 68-F even to the State transport undertaking except on a draft notified route. To a route to which the State transport undertaking cannot apply, the State Transport undertaking cannot get a permit. Now as these grants of temporary satisfaction, it should follow that only on such a draft notified route where the increased needs of the travelling public can be ascertained under Sec. 68F by the transport authorities temporary permits can be granted. The question is whether such an ascertainment can be done on carved out routes. It should be noted that the route carved out by the private operators is not a draft notified route. It is an imaginary route. The requirement of law regarding the ascertainment of increased traffic needs of the travelling public is not easy to be met by the transport authorities on such imaginary routes. Under Chapter IV-A of the Act the needs of the travelling public are designed to be ascertained either by the State transport undertaking or the transport authority and not by the private operators. For the reasons mentioned above, we are of the opinion that Section 68-F will have no application to carved out routes. The same conclusion is reached by examining the consequences that would follow from accepting the carved out theory. The statutory priority accorded to the State transport undertaking under S.68F of the Act in the matter of granting temporary permits presupposes that the route for which State transport undertaking and private operators can apply should be one and the same. Unless the route applied for by two applicants is the same, there can be no competition between those applicants for grant of permits on that route nor can any question of grant of priority arise unless both applications are for the same route. As a State transport undertaking can make applications only for draft notified routes and

accordingly cannot make applications for carved out routes, the question of granting of priority to State Transport undertaking on a carved out route can never arise. Thus the acceptance of carved out theory will lead to destroying of the statutory priority granted to the State Transport undertaking. Thus the theory of carved out routes by subverting law is capable of producing immense mischief though conferring undue benefits on the favoured few. It clearly destroys the statutory priority S.68-F of the Act gives to a State transport undertaking. Under the cover of that theory, the private operator who is almost exiled by Chapter IV-A of the Act from the area of nationalised routes will now regain primacy raising higher from his position of subordination to the State transport undertaking. Under that theory no private operator either clever or dull, can ever be prevented from over-reaching the law, opening a route of his choice and defeating the priority set up by Section 68-F of the Act in the matter of granting transport permits. Under the theory of carved out routes, a private operator will be left free to make all sorts of permutations and combinations of draft notified routes and make them into a carved out route so that he may gain a temporary permit. Even in the matter of displacement of temporary permits granted private operators the carved out theory works contrary to the express purposes of section 68-F of the Act. Section 68-F of the Act requires a temporary permit granted to a private operator to become ineffective on a permit being granted to the State transport undertaking which will be after the draft scheme was approved. This is on the assumption that the State Transport undertaking and private operators are to be granted permits on the routes notified. State transport undertaking cannot be granted a permit on a carved out route, If the carved out route theory is accepted, a temporary permit granted to a private operator on a route other than the draft notified route cannot be rendered ineffective under S.68-F by reason of a permit granted to a State transport undertaking on a notified route. A temporary permit granted on a carved out route will thus become eternal and irreplaceable. Truly the carved out theory created out of the imagination of private operators returns back the lost Kingdom of motor transport to them from where they were exiled by Chapter IV-A of the Act. It is not permissible for the Court to restore the lost primacy to the private operator whose exclusion is the principal theme of Chapter IV-A of the Act. For these reasons we reject the argument that the private operators can apply for grant of temporary permits on carved out routes. We are of the clearest opinion, that the petitioners are not entitled under law to obtain temporary permits under S.68-F (IC) of the Act on the so-called carved out routes. But we find a Division Bench of this court consisting of Kuppuswamy C.J. and Seetharama Reddy J. taking a contrary view in *Sayed Jeelam Vs. State Transport Appellate Tribunal, Andhra Pradesh, Hyderabad and Others*, . Speaking for the Division Bench in Writ Appeal and reversing a Judgment of a learned single Judge, Kuppuswamy C.J. ruled, that it is open for private operators to create carved out routes and to apply and obtain temporary permits under S.68-F(IC) of the Act on such carved out routes. With respect we express our great inability to agree with that view. The reasons which we have set out above are sufficient to explain our stand. But

we say in particular that the learned Judges had failed to note the policy of Chapter IV-A of the Act, which had accorded the private operators the lowest of priority and treated them as aliens though not an alien enemies in the Kingdom of motor transport falling under Chapter IV-A. For the above reasons, we are of the opinion that the judgment of the Division Bench is not correct. We are of the clear opinion that the petitioners' applications for carved out routes fall out of the purview of section 68-F of the Act and that this Court cannot direct consideration of the applications of the petitioners filed for grant of temporary permits on those carved out routes.

17. It is argued that what is contemplated by law to be granted under S.68F of the Act is a temporary permit and that therefore the procedure to be followed for granting of such a temporary permit should be the same as the short, sweet and summary procedure indicated in Section 62 of the Act. Section 62 of the Act provides for somewhat of a bi-lateral procedure. Almost across the counter permits are issued under that section of a bi-lateral basis. In *Dhanna Singh Vs. The Regional Transport Authority, Gwalior*, it was held that a temporary permits issued under S.68-F of the Act should be understood as a temporary permit within the meaning of section 62 of the Act. The petitioners had therefore relied upon this decision and argued that a temporary permit can be granted under S.68F(IC) of the Act to the private operators following the bi-lateral procedure indicated in S.62 of the Act. We are of the opinion that this argument is not correct. We find it impossible to equate temporary permits falling under S.68F of the Act with the temporary permits mentioned under Sec. 62 of the Act. In our view, they are totally two different things. For that reason we are of the opinion that temporary permits under S.68-F of the Act cannot be granted either on a bi-lateral basis or on the basis of the commercial principle of "first-come-first-served". We find no similarity between S.68-F and S.62 of the Act lasts not beyond a maximum period of four months. Such a permit under S.62 can only be issued for serving one of the specified purposes mentioned in that section. Above all, section 62 is not rooted in the principle of state monopoly and exclusion of private operators. In all these respects, a permit granted u/s 68-F of the Act, though called temporary, is different from a permit granted u/s 62 of the Act. For the aforesaid reasons, we are unable to agree with the judgment reported in *Dhanna Singh v. Regional Transport Authority, Gwalior* (supra).

18. What then is the proper procedure that should be followed for grant of temporary permits under S.68-F of the Act. It must be admitted that S.68-F does not lay down in full detail the procedure to be followed. But we must remember that the statute requires priority to be granted to the State transport undertaking. Clearly giving effect to this requirement of statutory priority requires that the State transport undertaking should have a reasonable opportunity to apply for the grant of temporary permits on the routes which were draft notified. But when the State transport undertaking does not avail itself of such an opportunity, Section 68-F(IC) permits grant of temporary permits to private operators. But those can only be an equal conditions and terms to all

private operators. From the above it should follow that while the granting authority should be at liberty to receive applications for grant of temporary permits under S.68F from any private operator or State Transport undertaking at any time either before or after the competent Transport authority reaches its requisite satisfaction taking those applications for consideration and disposing them of can be done only after the requisite satisfaction is notified to the public inviting all to make applications for grant of permits and along with all further applications received in response to such public notifications. We hold that the granting authority cannot grant permits on a bi-lateral basis and without inviting applications. Giving of public notice of its satisfaction regarding the routes and the increased number of buses it proposes to put and inviting applications from all eligible is the irreducible minimum of procedure that should be observed by the authorities. All the applications should be considered together and disposed of together. It would be necessary for the applicants for temporary permits to know as to how many number of vehicles and on what draft notified routes the transport authorities propose to put extra buses. Unless the granting authority makes all these points known to the public as a whole it would not be possible to ensure equality of opportunity among the private operators without at the same time whittling down in any way the statutory priority given to the State transport undertaking. Any other method would be unfair to law and would be conducive of great mischief. To permit the State authorities granting temporary permits u/s 68F of the Act to act in secrecy cannot be in public interest nor can they be permitted to withhold information to some while granting access to such information to the others. In our opinion, the granting authority u/s 68-F should follow a summary procedure notifying its satisfaction, the number of vehicles it proposes to put on the draft notified routes, and should invite applications for those buses. It should then receive applications under S.68F and consider those applications so received together with any applications filed earlier before it and dispose them all together according to the scheme of statutory priority granted to the State transport undertaking and applying the criteria of equality, eligibility, fitness to the private operators. Of course, this does not mean that the transport authorities while granting temporary permits under S.68F of the Act should follow the elaborate procedure indicated in S.57 of the Act. S. 57 of the Act is intended for the grant of pucca permits without excluding private operators. That procedure is somewhat cumbersome and is unsuited and is applicable to the grant of temporary permits under S.68-F of the Act. It may be for that reason that Chapter IV-A fails to require the following of the procedure of S.57 in granting temporary permits. If we by implication read the procedure indicated in S57 of the Act into S.68F of the Act, the result may be to defeat the very purpose of S.68-F of the Act to provide for the increased need of the travelling public before the draft schemes are approved. For that reasons we hold that the procedure of S.57 of the Act has no application to S.68F of the Act.

19. It is urged that the State Transport undertaking is not a necessary party, because it is not an interested party. It is said that the State Transport

undertaking had never made applications in these cases for the grant of temporary permits and, therefore, it has not shown any interest in the matter. It is difficult to agree. Section 68-F of the Act accords the State Transport undertaking the highest of priority in the matter of obtaining temporary permits. As noted above, Chapter IV-A of the Act is based on the principle of exclusion of private operators. The question of the State transport undertaking making an application can arise only after the competent authority had notified its satisfaction. Before the occurring of that event the failure of the State Transport undertaking to make applications for grant of temporary permits cannot be counted against it. Any order made by this Court in these cases would vitally affect the interests of the State transport undertaking which is made by this court in these cases would vitally affect the interest of the State Transport undertaking is both a necessary and proper party to these writ petitions. The above mentioned Karnataka Judgment had also taken a similar view.

20. The last question is, whether the interim directions could be granted where the relief sought for is also the same as in the main writ petition, without deciding the facts of the case and giving findings thereon.

21. This question has to be answered eschewing narrow technicalities and taking a broad and liberal view that befits the interpretation of a remedial constitutional provision, like Art. 226 of the Constitution. Referring to the language of the Art. 226 of the Constitution, Chief Justice Subba Rao, speaking for a Division bench of this Court, observed in *Sayeswara Rao v. Guntur Dt. Co-operative General Bank, ALLER (1956) AP 294* that "the High Court has unlimited powers under Art. 226 of the Constitution of India to reach and remove injustice wherever it exists. "With great respect we are in complete agreement with that view of Art. 226 of the Constitution of India. Art. 226 of the Constitution of India is couched in a language which in its sweep and scope, meaning and purpose transcends greatly similar judicial powers and jurisdictions ever conferred on or exercised by any of the superior courts in Anglo-Saxon countries in modern times. Clearly, the Constitution of India intends Art. 226 to be used by courts as an effective judicial remedy to fight and vanquish injustice anywhere and everywhere, provided the cause of action that breached the system of justice in the sovereign Socialist Democratic Republic of ours arose within its jurisdiction. It is for this reason that one of us, (Justice P>A. Choudary) described Art. 226 of the Constitution as "the conscience of the Constitution." (See AIR 1967 Journal P.13). There can therefore, be no doubt in our minds that this Court under Art. 226 of the Constitution has power to issue final as well as interim directions. Then the true question is not whether the courts enjoy those powers, but how the Courts should exercise those powers. In this context we must understand that Art. 226 of the Constitution is not intended to do away with the well known distinction between public law and private law; nor its authors intended to discard the inherent limitations subject to which these public law remedies are granted. The courts in the use of public law remedies governing public administration, should take into account as relevant factors the degree of detriment that may be caused

to public weal. Pure public law issues should not, therefore, be allowed to be agitated by recourse to private legal actions or on their analogy. (See B.B.C. case in (1983) 1 WLR 23). If the public administration that gives rise to public law issues is allowed to be subjected to the norms of private law litigation, the public interest would be gravely jeopardized. The danger in allowing the private legal remedies to supervise public administration arises out of the fact that in the matter of awarding private law remedies the courts enjoy no judicial discretion to award those reliefs or to refuse them. Where private injury is shown judicial remedy must follow redressing it. This is the meaning of saying that a civil Court enjoys no discretion in the matter of granting relief. But in the field of public law, an applicant enjoys no absolute right to obtain public law remedies. There, the Courts enjoy wide enough, though not arbitrary discretion, to grant or to refuse relief to an applicant. In order to enable the Court to exercise this discretion law requires the applicant in a writ petition to observe the rule of uberrima fides and to exercise all the facts to the court so that the Court may consider whether it is a fit case or not to grant the remedy. In that branch of law the Court will take into account not merely the nature of illegalities of the acts done or omitted to be done by the public authority, but also the irremediable destabilizing effects that may be produced by judicial intervention at that particular stage and the unjust loss that might be caused to the innocent third parties. Thus, attachment to reality is made by law as the very condition for adjudication of public law issues. These remedial distinctions are somewhat akin to the distinctions the American Constitutional Law draws between preferred freedoms and non-preferred freedoms. Sometimes, we are in mortal peril of forgetting these basics of public law. The courts by too frequently applying judicial braking to acts of public authorities by means of ex parte interim orders granted under Art. 226 of the Constitution of India without finding on merits may sometimes be gravely crippling the running of public administration. Granting orders postponing the dates for payments of excise dues payable to the State by the Abkari contractors under terms of agreements or granting of time to pay sales tax amounts to the merchants which are collected by them from their customers and which are immediately payable by them to the State under the Sales Tax Act as final relief in the writ petitions, are only two examples which fall under this category. The flow of the great powers of a welfare State should not be demanded. Constitutional virtue would only require their proper regulation. It is for the reasons of public good and in "O" Reilly v. Mackman 1983(2) ACC 237 the House of Lords has recently refused to allow prisoners to proceed by way of a suit filed for declaration that the visitors of Hull Prison violated principles of natural justice in awarding punishment after riot. The House of Lords held, that the only available procedure for the suitors was by way of application for the judicial review in the High Court. (See, even the more striking case of the House of Lords in Cocks v. Thanet District Council (2) 1983 ACC 286 decided on the same day).

22. Unfortunately, there is a growing tendency to exercise the public law powers

on the analogy of private law. There is no analogy that can truly be drawn between these two powers. We are afraid that, unless the difference between public law and private law is fully noticed and observed and the tendency to treat them both alike is immediately reversed, the exercise of public law on the analogy of private law might prove sooner than later to be greatly deleterious to good public administration.

23. In this batch of case, the above fears are not wholly unjustified. In these cases, the petitioners asked for the issuance of writs of mandamus compelling the transport authorities to consider and dispose of applications filed by them for grant for temporary permits under S.68F(IC) of the Act, but obtained reliefs through interim directions by getting transport permits themselves. Thus through the interim directions they had succeeded in obtaining reliefs which assuredly they would not have been able to get in their main writ petitions. It is clearly contrary to the statutory provisions contained in Chapter IV-A of the Act accords to the private operators in the scheme of bus nationalisation, we can find no justification in private operators" getting such substantive and stupendous reliefs through interim orders. What is worse, their running of the buses is contrary to law. Orders obtained from constitutional courts in opposition to law, cannot be considered to be in the interests of public good either that of the travelling or non-travelling public. In the matter of observance of rule of law, the obligation of the course to observe law is no less than that of the legislature or the Executive. The running of the buses in these cases cannot therefore be validated.

24. Even after the pronouncement of the House of Lords in *Cyanamid Case* 1975 (1) All ER 504 (see *Interlocutory Injunctions Since Cyanamid*" by Christine Gray in 1981 *Cambridge Law Journal* page 307) we are of the opinion that the age-old two principles of *prima facie* case and balance of convenience are valid working guides for awarding the interim reliefs. The petitioners in these cases have neither *prima facie* case, nor any balance of convenience in their favour. We have already seen that the affidavits of the petitioners do not even allege that the transport authorities are satisfied that there is any need to increase the number of buses on these routes. Even if there is such a need found by the State transport authorities, the State transport undertaking has a statutory priority in the matter of getting temporary permits over the petitioners. In any case, there are other private operators entitled to equal treatment in the matter of obtaining such permits. The petitioners had come to this Court just a few days after having filed their applications before the transport authorities. Earlier similar applications have been rejected by this Court. Considering all these facts, it is impossible to say that the petitioners have shown *prima facie* case in their favour or that the balance of convenience exists in their favour. The observations of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, show that interim relief can be granted only as ancillary to the main relief which may be available to a party in the final determination of his rights in the case. Accordingly to the authority of *Madan Gopal Rungta*, the Court should not by its orders vest rights in the parties. It should only protect rights already vested in

them. As there are no rights existing in favour of the petitioners on the day of their filing of these writ petitions, we are of the opinion that no interim directions ought to have been granted in these cases. Granting of such reliefs is not necessitated in these cases by any need to preserve the effectiveness of any judgment that may be made in their favour. Refusing to grant interim reliefs in case like these where the petitioners have no prima facie case and where no irreparable harm could be said to have been caused to them with respect of their existing rights should be the normal rule.

25. From the facts narrated above, it should be clear that these writ petitions have been filed into this court not in bona fide assertions of the rights of the petitioners. We are of the opinion that these writ petitions are filed more in the nature of a gambling venture. Their claims for consideration of their applications for granting temporary permits under S.68-F(IC) of the Act are wholly untenable. The circumstances that all these writs have been filed by various operators, almost acting in unison cannot completely be ignored. Even if we omit from our consideration the counter allegations made by some of the respondents that the writ petitioners, like to writ petitioners in W.P.Nos. 8682 and 9164 of 1984 are trafficking in permits obtained from this court through judicial process, the above facts and circumstances which are established clearly show the gambling nature of these writ petitions. We, therefore, feel it necessary for this court to clearly disapprove such acts of abuse of judicial process resorted to by litigants. As Mr. Justice Arthur T. Vanderbilt observed:

".....it is in the Courts and not in the legislature that our citizens primarily feel the keen, cutting edge of the law. If they have respect for the work of their courts, their respect for law will survive the shortcomings of every other branch of Government, but if they lose their respect for the work of the Courts, their respect for law and order will vanish with it to the detriment of society." (see the Judicial process by Henry J. Abraham, Fourth Edn. P.3)

"If the salt have lost its savour, wherewith shall it be salted? Asks the Bible. In order to preserve the vitality of the judicial process and to strengthen the unsullied administration of justice we express our disapproval of the acts of these petitioners in these cases by directing each of them to pay to the APSRTC a sum of Rs.250/-.

26. While , we hold that the petitioners are guilty of abuse of process of this Court, we must also hold the State Government grossly guilty of failing to discharge its duties under Chapter IV-A of the Motor Vehicles Act. These routes have been draft notified under S.68-C of the Act some seven years back and to this day nothing more is known as to what happened to them. The draft schemes were neither considered nor approved, nor rejected by the State Government . it is wholly contrary to the spirit of law of Chapter IV-A of the Act enacted by the Parliament. That Chapter implies a duty on the part of the State Government to speedily consider and either to approve or reject the schemes of bus nationalisation submitted to it by the APSRTC in the interest of the travelling

public. Failure of the State Government to discharge its duty over these unconscionably long years of time results in greatly injuring the interest of the travelling public who unfortunately remain silent. It is not easy to find any reasonable justification for this failure on the part of the State Government. Surely , the State administration should be more sensitive to the interest of the travelling public. As no one from the public has asked this court to mandamus the State Government for early consideration of the schemes pending before it, we acting on our own, direct the State Government to consider and dispose of all the schemes published under S.68-C of the Motor Vehicles Act, and now pending before it within six months from the date of the receipt of this order. We also direct the State Government to publish the same in the Official Gazette immediately thereafter.

27. The writ petitions are accordingly dismissed with costs. Advocate's fee rs.250/- in each.

28. Petitions dismissed.