

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 14793 of 2006 (J)

PETITIONER :

**LUKA DEVASSIA, MATTAPPILLIL HOUSE,
T.V.PURAM P.O., VAIKOM, KOTTAYAM.**

BY ADV. SRI.P.DEEPAK

RESPONDENT(S):

- 1. REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM.**
- 2. SECRETARY, R.T.A. ERNAKULAM.**
- 3. K.S.R.T.C.,
REPRESENTED BY ITS MANAGING DIRECTOR,
'TRANSPORT BHAVAN', THIRUVANANTHAPURAM.**
- 4. THE STATE TRANSPORT APPELLATE TRIBUNAL,
ERNAKULAM.**

**R1,R2 & R4 BY SR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R3 BY ADV. SRI.P.C.CHACKO, SC, KSRTC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2015,ALONG WITH WP(C).NO.20520 OF 2009 AND CONNECTED
CASES, THE COURT ON 10-04-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 7/10/2005.
- P2 COPY OF THE APPROVED SCHEME IN RELATION TO THE KOTTAYAM ERNAKULAM NOTIFIED ROUTE.
- P3 COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT GRANTING PRIOR CONCURRENCE FOR RENEWAL OF PERMIT TO STAGE CARRIAGE KL-05 Q/4010 ON THE ROUTE KAIPPUZHAMUTTU ERNAKULAM, DATED 18/1/06.
- P4 COPY OF THE JUDGMENT OF STAT DATED 14/6/2004 IN MVAA NO.86/2004.
- P5 COPY OF THE OBJECTION FILED BY THE 3RD RESPONDENT IN MVARP NO.2/06
- P6 COPY OF THE ORDER DATED 23/3/2006 IN MVARP NO.2/2006
- P7 COPY OF THE TEMPORARY PERMIT VALID TILL 15/8/2006
- (I.A.NO.16610/2006) P7 COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 15/06/2006
- (I.A.NO.12398/2008) P8 COPY OF THE PROCEEDINGS OF THE RTA, KOTTAYAM DATED 9/3/07
- P9 COPY OF THE APPLICATION FOR RENEWAL DATED 18/11/2010 WITH COVERING LETTER.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.P.C.Nos.14793 of 2006, 20520 of 2009,
20537 of 2009, 22091 of 2009, 22196 of 2009,
22347 of 2009, 22482 of 2009, 22487 of 2009,
22604 of 2009, 23031 of 2009, 23400 of 2009,
23688 of 2009, 23709 of 2009, 23851 of 2009,
24380 of 2009, 24434 of 2009, 24592 of 2009,
24941 of 2009, 25953 of 2009, 29408 of 2009,
33231 of 2009, 33428 of 2009, 33526 of 2009,
34818 of 2009, 34837 of 2009, 674 of 2010,
3095 of 2010, 12578 of 2010, 26686 of 2010,
8499 of 2011, 8503 of 2011, 11576 of 2011,
12298 of 2011, 12892 of 2011, 15448 of 2011,
26259 of 2013, 26309 of 2013, 27137 of 2013,
27636 of 2013, 462 of 2014 and 8129 of 2014

Dated this the 10th day of April 2015

J U D G M E N T

SHAFFIQUE, J

These batch of writ petitions have been filed challenging a scheme (hereinafter referred as the 2009 scheme) published by the Government under Section 100 (3) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the MV Act, 1988' or '1988 Act'). As common questions arise for consideration, these writ petitions are disposed of

by a common judgment.

2. For easy reference, documents referred herein are as described in W.P.C.No.22091/2009.

3. The brief facts as narrated in the said writ petition are as under:

Kerala State Road Transport Corporation (for short 'KSRTC') and its Employees Association objected to the grant of permits by Regional Transport Authority (for short 'RTA') to operate stage carriages in Kottayam-Kumily National Highway, by filing writ petitions before the High Court. It was contended that though it was a supplementation scheme, it violated Thekkady-Ernakulam scheme and Kottayam-Thekkady scheme. The learned Single Judge directed the RTAs not to grant permits to private operators in the route. The writ appeals filed by the private operators came to be dismissed, against which the special leave petitions were filed before the Supreme Court. By an order dated 04/10/2005 in Civil Appeal No.4994/2002 and connected

cases, the Supreme Court directed the KSRTC and the appellants in the said cases who were private vehicle operators, to give suggestions to the State Government to find out a workable arrangement in the matter relating to operation of stage carriages to prevent unnecessary inconvenience to the travelling public. It was observed that such an arrangement will be applicable to the schemes covered by the judgment of the High Court and the State Government shall have discussions with the parties and find out a solution. Pursuant to the said direction, the matter was heard by the Government and it was decided that the existing private stage carriage operators should be permitted to operate the service along with KSRTC and to amend the supplementation scheme subject to final orders to be passed by the Supreme Court in the pending Civil Appeals. The matter was heard by the Supreme Court on 16/11/2005 and the State Government was directed to file the amended scheme within six weeks. Accordingly, Ext.P3

order dated 31/12/2005 was issued permitting the stage carriage operators as on 02/11/2005 to operate the service buses along with KSRTC. The Transport Commissioner was directed to forward necessary proposal to Government to amend the scheme. Ext.P4 dated 09/05/2006 is the notification issued by the Government publishing the proposal for amended scheme. Clause 4 of the schedule to the said scheme indicated that the existing private operators will be permitted to continue. Further, in Clause 5(a), in relation to the question whether exclusion of other service will be complete or partial, it was stated as partial, and in clause 5(b), to the question whether other services are to be excluded in the said sectors, the answer given was "*private operators will be permitted to operate on portion of the notified route not exceeding 10 Kms or 10% of the length of the route applying for, whichever is less*". In the column relating to any other information, it was indicated that "*the right to operate any new service and to increase the trips in*

the above routes will be reserved exclusively for Kerala State Road Transport Corporation". Without finalising Ext.P4 proposal, a fresh proposal was published as per Ext.P5 notification dated 09/05/2007, and final notification of the scheme was published on 06/05/2008, as Ext.P6, which was challenged by filing W.P.C.No.17813/2008 and connected cases. This Court, as per judgment dated 24/07/2008 found that the State exceeded its powers by notifying the approved scheme with provisions which are foreign to the proposals notified inviting objections and it was held that Clauses 4 and 19 of Ext.P6 have been notified in excess of the powers conferred on the Government under Section 100 (2) of the Act and also in violation of the principles of natural justice. Hence Clauses 4 and 19 of Ext.P4 notification were quashed observing that it shall be open for the Government to publish fresh draft notification and proceed in accordance with law. Thereafter another scheme was proposed as per Ext.P8 draft notification dated 15/09/2008. To the question

in clause 4 of the Schedule to the proposed scheme as to whether the services are to be operated by the State Transport Undertaking (for short 'STU') to the exclusion of other persons or otherwise, the answer given is as under:

"Yes, the permits issued in private sector on or before 09/05/2006 will be allowed to continue till the dates of expiry of the respective permits. Thereafter, temporary permits alone will be granted to them and that too, if the STU does not apply for permits in the same routes. When the STU applies for introducing a new service in the above routes, such number of existing private stage carriage permits in the said routes shall not be renewed. The principle of last come first go shall be applied in such cases. Permits issued after 09/05/2006, shall not be renewed and no permit, regular or temporary shall be issued afresh under any circumstances in the 31 routes mentioned in the Annexure or any portion thereof."

4. The petitioners filed objections to the aforesaid proposal. About 2000 objections were submitted and certain

persons were present for hearing before the Secretary to Government. It is submitted that ignoring all such objections and the directions of the Supreme Court, notification dated 14/07/2009 has been published finalising the 2009 scheme, which is produced as Ext.P9. Clause 4 of the Schedule to the notification reads as under:

4. Whether the services are to be "Yes, the permits issued in the private operated by the STU to the exclusion of sector on or before 09/05/2006 will be other persons or otherwise. allowed to continue till the dates of expiry of the respective permits. Thereafter, regular permits will be granted to them. When the State Transport Undertaking applies for introducing new service in the above routes, corresponding number of existing private stage carriage permits in the said route whose permits expire first after filing application by the State Transport Undertaking shall not be renewed. As regards permits issued after 09/05/2006, temporary permits alone shall be issued afresh on expiry in these routes or any portion thereof. Till such time, the State Transport Undertaking replaces with new service. The decision of the State Transport Undertaking to apply for permits to replace the existing stage carriages as above shall be taken by the Chief Executive of the State Transport Undertaking".

5. It is contended that Ext.P8 proposal and the 2009 scheme were in total contradiction to Ext.P3 and the directions issued by the Supreme Court. It is also contended that, by the 2009 scheme, the intention is to entrust the entire transport system to vest with KSRTC in an arbitrary and illegal manner. Petitioners also challenge Clauses 6 and 7 of the notification by which the Government ought to have specified the maximum and minimum number of vehicles as well as trips to be operated by the STU. The assurance made in the scheme "as per the traffic demand" is according to the petitioners, not included in the Statute and the Rules framed thereunder. On these facts, the following contentions are urged:

i) The scheme is in total violation of Ext.P3 order passed by the Government pursuant to the directions issued by the Supreme Court.

ii) The objections raised by the petitioners have not been considered while publishing the 2009 scheme and

therefore it is in violation of the principles of natural justice.

iii) Clause 4 of the schedule to the scheme is intended to exclude all private stage carriage operators from continuing their operations in the said route.

iv) The Government, while considering the objections relating to exercise of powers under Section 100 of the Act, is doing a quasi judicial act which requires an order to be passed after hearing the respective parties, which has not been done in the present case and therefore the 2009 scheme suffers from the said infirmity.

v) There is complete non-application of mind as the scheme does not contemplate whether the KSRTC/STU shall be carrying on operation in a specified number of routes or trips. As per traffic demand as mentioned in Clauses 6 and 7 of the schedule to the scheme is an elastic word and the State Government has not given any mandate to KSRTC to operate service and specify at least the number of minimum services that could be operated by them in a particular

route.

vi) In so far as Form A is a statutory form, all the entries have to be filled up keeping in mind the obligations vested with the Government to provide an efficient, adequate and economic road transport service, which is lacking in the 2009 scheme on account of not giving the exact particulars or at least a rough estimate of the maximum and minimum number of vehicles/trips in each route.

Vii) The Scheme gives unbridled power to the Chief Executive Officer of KSRTC to exclude a private operator of his choice.

6. Counter affidavit is filed by the 1st respondent/State Government inter alia stating that as per notification dated 03/08/1962 published on 21/8/1962, the Government had notified Kottayam-Thekkady route in the supplementation scheme in terms of Section 68D of the Motor Vehicles Act, 1939 (hereinafter referred as MV

Act,1939 or '1939 Act'). Later, the said scheme was modified by incorporating Ernakulam-Thekkady route along with Kottayam-Thekkady route. The scheme was finalised as per notification published on 01/11/1966. Consequent to the publication of the said scheme, only such private operators operating service on 12/10/1966 were made eligible for regular permit in the route. However, the RTA issued two regular permits on 03/06/2002 and 07/07/2002, of which one was to Sri.Rahul Tom on the route Kottayam-Kumili. This came to be challenged by KSRTC Employees Association and KSRTC in O.P.Nos.22415/2000 & 23915/2000. This Court, quashed the permits granted in favour of the said person which was challenged by filing a writ appeal. When the Division Bench confirmed the decision of the learned Single Judge, the matter was taken up before the Supreme Court by the bus operators as S.L.P No.15796/2001. The Supreme Court passed an interim order on 24/09/2001 directing status quo to be maintained as on

the date with regard to grant of permits. It is thereafter, that Government order dated 30/01/2005 was issued. It is stated that though notification dated 09/05/2006 was published, it was decided to make certain amendments to the said notification and the State Government decided to withdraw the said notification. The matter was taken up before the Supreme Court on 21/09/2006 wherein the Supreme Court held as under:

"A preliminary notification had been issued. It is stated that taking into account the various objections and suggestions received, the State Government proposes to introduce a comprehensive scheme taking into account various difficulties encountered and highlighted. It is stated that for that purpose, there is no need for withdrawal of the preliminary notification. It is for the State to decide whether the preliminary notification needs to be withdrawn or a fresh preliminary notification in place of the earlier one needs to be issued. We do not think that any orders in that regard are necessary to be passed in these cases."

7. Therefore, it is stated that the Government was

given a free hand to issue preliminary notification by withdrawing the earlier notification. An expert committee was constituted as per Government order dated 18/01/2007 and as per the recommendations of the committee, a policy was formed and fresh proposal was notified on 09/05/2007. Final notification was published on 06/05/2008. This again came to be challenged before this Court and as per judgment dated 24/07/2008, clauses 4 and 19 of the notification were quashed with liberty to publish a fresh notification. Therefore, it is submitted that the draft notification was published, the objections were considered, they were heard in person and final scheme was published on 14/07/2009. It is stated that the 2009 scheme, which is impugned, has been issued in terms of the provisions of Chapter VI of the M.V.Act, 1988 and there is no reason to challenge the same. It is stated that as per 2009 scheme, clause 5(c) clearly provides that private stage carriage operators are allowed to overlap an extent of 5 Kms or 5% of

the length of their own routes whichever is less on the notified routes for the purpose of intersection. According to the respondent, Clause 5(c) is incorporated with a view to accommodate private stage carriage operators also on the notified routes in terms of the said clause. In regard to clauses 4 and 19 of the notification, it is stated that it is the policy of the State Government to protect the interest of the STU and therefore there is no illegality in including such provisions in the scheme. It is further submitted that 2000 objections were received from affected parties and the STU. All those who have appeared were heard in person and it is thereafter that the 2009 scheme was published in compliance of Section 100(3) of the Act. In regard to the inclusion of the maximum and minimum number of vehicles, trips etc. it is stated that State Government and KSRTC are aware of the fast increase in traffic demand in the State. New business centres, new educational centres and new industrial centres are coming up on a day to day basis

throughout the State and therefore it is not possible to mention the maximum or minimum number of vehicles at this stage. In other words, no prediction can be made and the intention is to operate as many number of trips in any of the routes depending upon traffic demand. If minimum or maximum number is prescribed, it would handicap the KSRTC in operating service and the same will lead to public criticism against the State and KSRTC. Further, it is stated that the private operators cannot have any grievance in terms of clauses 6 and 7 of the schedule to the scheme. The respondents therefore sought for dismissal of the writ petition.

8. Counter affidavit has been filed by KSRTC reiterating the contentions as stated by the Government. According to them, KSRTC is capable of operating service in all the routes with efficiency and has all the necessary infrastructure for providing efficient, adequate, economical and properly co-ordinated system. It is stated that presently

KSRTC is operating 5282 schedules in different routes in the State utilising a fleet of more than 5400 vehicles. The Corporation has employed 36,000 staff spread over to ministerial, mechanical and operating units. It is also employing casual employees on daily wages recruited through employment exchanges. It has issued 640235 concession tickets during 2010-2011 at a cost only at 13.59% of the actual fare. It also operates various class of services and special trips are being conducted in emergency situations. It is therefore stated that the scheme virtually does not exclude all the private operators whereas it has clearly indicated that the route can be used for intersection upto a maximum of 5 Kms or 5% whichever is less. Further, appropriate provisions have been made in respect of existing stage carriages. Therefore, it is not a case of complete exclusion of the private stage carriage operators. It is contended that the scheme takes care of the interest of travelling public, KSRTC as well as the private stage carriage

operators and there is no reason to challenge the said scheme.

9. Having regard to these factual issues, the only question that arises for consideration is whether the 2009 scheme suffers from any infirmity as contended by the petitioners warranting interference by this Court.

10. Smt.Sumathi Dandapani, learned Senior counsel, Sri.K.V.Gopinathan Nair and Sri.Jithesh Menon, learned counsel led the arguments on behalf of the petitioners, supported by other counsel appearing on behalf of the petitioners. On behalf of the respondents, Sri.Syamakumar, senior Government Pleader and Sri.P.C.Chacko, learned Standing Counsel appearing for KSRTC submitted their arguments. Either side placed reliance on various judgments which we shall consider in due course.

11. Before proceeding further, it would be useful to extract the relevant portions of the scheme which have been impugned by the learned counsel for the petitioners.

4. Whether the services are to be "Yes, the permits issued in the private operated by the STU to the sector on or before 09/05/2006 will be exclusion of other persons or allowed to continue till the dates of expiry of the respective permits. Thereafter, regular permits will be granted to them. When the State Transport Undertaking applies for introducing new service in the above routes, corresponding number of existing private stage carriage permits in the said route whose permits expire first after filing application by the State Transport Undertaking shall not be renewed. As regards permits issued after 09/05/2006, temporary permits alone shall be issued afresh on expiry in these routes or any portion thereof. Till such time, the State Transport Undertaking replaces with new service. The decision of the State Transport Undertaking to apply for permits to replace the existing stage carriages as above shall be taken by the Chief Executive of the State Transport Undertaking".

5. If the operation shall be to the exclusion of other services
 - (a) Whether such exclusion shall be complete or partial Partial till the existing private services operating on the routes are replaced as provided in item 4 above.

 - (b) If such exclusion shall be partial, the sector of the on or before 9-5-2006 and after 9-5-2006 route from where other shall be permitted to continue as in services are to be excluded Clause 4 above till they are replaced by and buses owned by the State Transport Undertaking.

- (c) Whether it is proposed to Yes, on the portion of the route allow other service to pick permitted to operate as in clause 4 or set down passengers above. Permits will also be granted to between any two places on private stage carriages of other routes the route covered by the permitting them to overlap 5 K.m. or 5% of the length of their own routes, whichever is less on the notified routes, for purposes of intersection.
- 6 The maximum and minimum As per traffic demand number of vehicles to be operated in relation to each area or route by the State Transport authority.
- 7 The maximum and minimum As per traffic demand number of trips to be provided in relation to each area or route by the State Transport Undertaking in the case of Stage Carriages.
- 19 Any other information the State Transport Undertaking may desire to increase the trips in the 31 routes in to be furnished in this connection. the annexure or its portions will be reserved exclusively for State Transport Undertaking.

12. The main argument is that by virtue of the scheme, eventually the private operators will be completely excluded from the operation of stage carriages in the notified route and they are always at the beck and call of the Chief Executive Officer of KSRTC in the matter relating to continuation of their operations. The argument is that by virtue of the scheme, private stage carriage operators will

be ousted in due course on KSRTC applying for a permit. Therefore, the scheme is clearly arbitrary. Further, the scheme originally envisaged in terms of Ext.P3 clearly protected existing private stage carriages which has been given a go by due to reasons best known to the Government, which again is contrary to the directions issued by the Supreme Court in Civil Appeal No.4994/2002. It is also argued that though some of the private operators were heard, no orders were passed by the Government which reflects an improper hearing as consideration of the objections and passing an order is a quasi judicial act. It is also argued that the judgment in **Kerala State Limited Stop/Stage Carriage Operators Association v. Government of Kerala** [2014 (2) KLT 135] wherein one among us (myself) had occasion to observe that even if the number of services or trips being operated has not been mentioned in the scheme, such operation of services and trips as per traffic demand was enough and it cannot be held

that the scheme is invalid, does not lay down the correct law, as the judgment of the Supreme Court in **Ramesh Chand v. State of U.P [(1979) 4 SCC 776]** which is relied upon is based on the existence of a statutory provision which is lacking in the case.

13. Having regard to the aforesaid submissions, the first question to be decided is whether the scheme has been published in violation of the principles of natural justice. Preamble to the scheme indicates that all the objectors were heard and the objections were considered by the Government. This, according to the learned counsel for the petitioners, does not suffice the requirement of hearing as contemplated under Section 100(2) of the Act. Section 100 (1), (2) and (3) of the M.V. Act , 1988 reads as under:

“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 area 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 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. "

As per Section 100(1), it shall be open for any person to file their objections to the State Government. As per Section 100(2), the State Government has to consider the objections after giving an opportunity to the objector or his representatives to be heard in the matter, if they so desire and either approve or modify such proposal. Petitioners have a case that all the persons who had submitted their objections were not heard. When it is apparent that several persons attended the hearing held by the Government, if any of the petitioners were not heard, it will only be on account of the fact that they did not desire to be heard in the matter. Therefore, merely for the reason that some of the petitioners were not heard cannot be termed as violation of the principles of natural justice. It is evident that the private stage carriage operators were aware of the date of hearing and when it is admitted that some of them were heard, it is clear that sufficient notice was given regarding the date of hearing.

14. The next question would be whether their objections are considered in accordance with law. Reference is made to the judgment of the Supreme Court in **Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation** [AIR 1959 SC 308]. By this Constitution Bench judgment, the Supreme Court, while considering the question relating to a scheme published by the Road Transport Department of Andhra Pradesh in terms of M.V. Act, 1939, had occasion to consider the validity of STU in taking over the routes on which private stage carriage operators were operating in Krishna District in Andhra Pradesh. Petition was filed under Article 32 of the Constitution of India for the enforcement of their fundamental rights to carry on business of motor transport. Under the M.V. Act, 1939, the statutory scheme provided for the STU to prepare a scheme which is to be published in the newspaper as well as in the official gazette. Any person affected by the scheme could file their objections. The

objections are to be filed before the Secretary to Government and it is for the Government to consider the said objections. While considering the said issue, a question arose as to whether State Government was acting as a quasi judicial body in discharging its functions under Section 68D of the Act. After referring to various judgments on the point and after referring to the provisions of Sections 68C and 68D of the M.V.Act, 1939, the Supreme Court held that,

"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."

Further, while rejecting the contention urged by the learned Attorney General that the Government is only discharging its administrative duty in approving the scheme in public interest, the Supreme Court held at paragraph 22 as under:

"The scheme propounded may exclude persons from a route or routes and the affected party is given a remedy to apply to the Government and the Government is enjoined to decide the dispute between

the contesting parties. The Statute clearly, therefore, imposes a duty upon the Government to act judicially. Even if the grounds of attack against the scheme are confined only to the purpose mentioned in Section 68C - we cannot agree with this contention - the position will not be different, for, even in that case there is a dispute between the State Transport Undertaking and the person excluded in respect of the scheme, though the objections are limited to the purpose of the scheme. In either view, the said two provisions, Sections 68-C and 68-D, comply with the three criteria of a judicial act, laid down by this Court."

Though this argument is attractive, there is a slight deviation in the statutory format when we come to the M.V. Act, 1988. As per the 1939 Act, the proposal of the scheme has to be published by the STU which according to them, was in public interest. Under the 1988 Act, the State Government itself publishes the proposal of the scheme in terms of Section 99 of the Act and the State Government themselves decides the objections raised. It is not a case where there was a proposal and an objection and a third party deciding the issue, which was the background in which

the Constitution Bench had come to the conclusion that the M.V. Act, 1939 imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme. Therefore, in the light of the change of the statutory format by which the proposal itself is made by the Government and it considers the objection and finalises the scheme, the principle laid down by the Constitution Bench in **G.Nageswara Rao** (supra) cannot be made applicable to Sections 99 and 100 of the M.V. Act, 1988.

15. Another judgment relied upon is **B.A.Linga Reddy v. Karnataka State Transport Authority** [AIR 2015 SC 767]. In this case, the question involved was whether the State Government, by modifying the scheme under Section 102 of the 1988 Act, is required to assign reasons while modifying the existing scheme. The Supreme Court, after referring to various judgments of the Apex Court, held in paragraphs 28 and 29 as under:

“28. *It is apparent that there is no consideration of the objections except*

mentioning the arguments of the rival parties. Objections both factual and legal have not been considered much less reasons assigned to overrule them. Even in brief, reasons have not been assigned indicating how objections are disposed of.

29. *Situation is worse in the orders modifying other schemes. Thus, modification of the Schemes could not be said to be in accordance with the principles of natural justice in the absence of reasons so as to reach the conclusion that private operators are meeting the genuine demands of the public in excess of the service provided by the STOs., hence, it cannot be said to be sustainable.”*

On the basis of this judgment, it is argued that in the present case also, no materials are forthcoming to indicate that the contentions urged by the petitioners have been heard and no reasons are stated for disregarding such contentions.

16. Another Constitution Bench judgment relied upon is **S.N.Mukherjee v. Union of India** [(1990) 4 SCC 594]. This was a case in which the issue was regarding the challenge to a Court martial proceedings. While considering

the necessity to pass a reasoned order, the Supreme Court held in paragraphs 39 and 40 as under:

“39. *The object underlying the rules of natural justice “is to prevent miscarriage of justice” and secure “fair play in action”. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may*

dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. *For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."*

17. Learned counsel for the respondents relied upon the Constitution Bench judgment in **H.C.Narayanappa v. State of Mysore** [AIR 1960 SC 1073]. That was a case concerning a notification issued under Section 68D of the

1939 Act which came to be challenged by the private operators of stage carriage on certain routes known as Anekal area in the Bangalore District. In paragraph 13 of the said judgment, the Constitution Bench had occasion to consider the judgment in **G.Nageswara Rao** (supra). But proceeding further, in paragraph 14, the Constitution Bench held as under:

"14. RE. 4 : The argument that the Chief Minister did not give "genuine consideration" to the objections raised by operators to the scheme in the light of the conditions prescribed has no force. The order of the Chief Minister discusses the questions of law as well as questions of fact. There is no specific reference in the order to certain objections which were raised in the reply filed by the objectors, but we are on that account, unable to hold that the Chief Minister did not consider those objections. The guarantee conferred by S. 68D of the Motor Vehicles Act upon persons likely to be affected by the intended scheme is a guarantee of an opportunity to put forth their objections and to make representations to the State Government against the acceptance of the scheme. This opportunity of making representations and of being heard in support thereof

may be regarded as real only if in the consideration of the objections, there is a judicial approach. But the Legislature does not contemplate an appeal to this Court against the order passed by the State Government approving or modifying the scheme. Provided the authority invested with the power to consider the objections gives an opportunity to the objectors to be heard in the matter and deals with the objections in the light of the object intended to be secured by the scheme, the ultimate order passed by that authority is not open to challenge either on the ground that another view may possibly have been taken on the objections or that detailed reasons have not been given for upholding or rejecting the contentions raised by the objectors."

18. Further reference is made to the judgment of the Supreme Court in **Multi Purpose Co-operative Societies v. State of Madhya Pradesh** [AIR 1967 SC 1815]. This judgment is by a three Judge Bench relating to challenge in respect of two schemes formulated by the STU of Madhya Pradesh. Challenge was taken up by private operators who were dissatisfied with the order passed finalising the scheme. In that background, Supreme Court considered the

question regarding the scope of enquiry. It is held that there is no express provision in Sections 68C or 68D laying down that the authorities hearing the objections must come to some finding of fact as a condition precedent to its final order. It is further held that the whole object of hearing objections is to consider whether the scheme provides an efficient, adequate, economical and properly co-ordinated road transport service. When the scheme is approved or modified, it necessarily follows that it has been formed to provide an efficient, adequate, economical and properly co-ordinated road transport service. Paragraph 8 is relevant, which reads as under:

“The third contention raised on behalf of the appellants is that the orders approving and modifying the schemes in this case do not show that the authority had applied its mind to the question whether the schemes were such as to subserve the purposes of providing an efficient, adequate, economical and properly co-ordinated transport service. Reliance in this connection is placed on certain American cases which hold that the lack of an express finding

necessary under a statute to validate an order of an administrative agency cannot be supplied by implication. When, therefore, such an administrative agency is required as a condition precedent to an order to make a findings of facts the validity of the order must rest, upon the needed finding. If it is lacking the order is ineffective and the lack of express finding cannot be supplied by implication. It is unnecessary for us to refer to the American cases in detail it is enough to say that the principles enunciated above may be unexceptionable where the existence of a finding is necessary for taking action, but that depends upon the words of the statute and. therefore. we must now turn to the words of S. 68-C and S. 68-D We have already indicated that the State Transport Undertaking, publishes a scheme when it has arrived at a certain opinion. After the scheme is published under S. 68-C any person affected by it can object within 30 days under S. 68-D (1). Thereafter the State Government considers the objections and gives an opportunity to the objector to be heard and also to the State Transport undertaking. Thereafter the State Government or the authority authorised by it either approves or modifies the scheme or even rejects it. There is no express provision in these two sections laying down that the authority hearing objections must come to some finding of fact as a condition precedent

to its final order. As such no express finding as envisaged in the American cases is necessary under S. 68-C read with S. 68-D that the scheme provides an efficient adequate, economical and properly co-ordinated road transport service. Besides we are of opinion that the whole object of hearing objections under S. 68-D is to consider whether the scheme provides an efficient, adequate, economical and properly co-ordinated road transport service. After hearing objections the State Government, or the officer authorised by it has either to approve or modify, or if necessary, to reject the scheme. Where the scheme is approved or modified it necessarily follows in our opinion that it has been found to provide an efficient, adequate, economical and properly co-ordinated transport service; if it is not of that type, the State Government or the authority appointed to hear objections would reject it. In the absence of a provision requiring an express finding in these two sections it seems to us that the very order of the State Government or the authority appointed by it to hear objections must be held to mean either, where the scheme is approved or modified, that it subserves the purposes mentioned in S. 68-C, or, where it is rejected, that it does not subserve the purposes. S. 68-D (2) does not require in our opinion any express finding, and even if there is none in the present case, it would

not invalidate the orders passed by the authority hearing the objections. The argument on behalf of the appellants under this head is also rejected.

19. It is therefore contended that when, according to the dictum laid down by the Constitution Bench in **H.C Narayanappa** (supra) as well as the three Judge Bench in **Multi Purpose Co-operative Societies** (supra), the observation made by the Division Bench of the Supreme Court in **B.A Lingareddy** (supra) cannot have any application. Reliance is also placed on the judgment in **Central Board of Davoodi Bohra Community v. State of Maharashtra** [(2005) 2 SCC 673] to contend that decision of the Bench of larger strength is binding over any subsequent Bench of lesser or co-equal strength.

20. Having regard to the aforesaid statement of law, we have to render a finding keeping in mind the previous litigations on the subject before arriving at a final decision. As rightly submitted by the counsel appearing on either side, the issue projected has a chequered career. First of all, we

shall refer to the Division Bench judgment of this Court in **Rahul Tom v. K.S.R.T.C** [2001 (3) KLT 261]. This judgment related to quashing of two regular permits granted in favour of private operators in violation of Ext.P1 modified scheme published on 01/11/1966. The challenge was made on the ground that once a scheme was approved and adopted, no permit could be granted on the route or in any segment of the route unless it was permitted by the scheme itself. The learned Single Judge quashed the permits granted in favour of the operators and in the appeal, the Division Bench, having considered the scope and effect of Chapter VI of the 1988 Act and the corresponding provisions of the 1939 Act, having relied upon the judgment of the Constitution Bench in **Adarsh Travels Bus Service v. State of Uttar Pradesh** [AIR 1986 SC 319] held that once a scheme is published by the effect of Section 104 of the 1988 Act, the scheme replaces the provisions of Motor Vehicles Act as it were and any question of grant of a fresh permit to a private operator

would depend on the relevant provision in the scheme. Accordingly, the judgment of the learned Single Judge was confirmed. This judgment of the Division Bench was the subject matter in Special Leave Petitions/Civil Appeals before the Supreme Court which ultimately resulted in the directions issued whereby fresh proposals were made and thereafter it resulted in the 2009 scheme. Therefore, the 2009 scheme is to be considered in the light of an existing scheme which was prevalent as on 01/11/1966, formulated under the 1939 Act. Viewed in the said background and directions issued by the Apex Court as well as the learned Single Judge of this Court, we are of the view that what is really germane for consideration is regarding the proposal made and the finalisation of the scheme taking into account the fact that the proposal was a scheme published under Section 99 of the Act. That, on account of certain circumstances by which Supreme Court had issued directions to consider the plight of private operators and

thereafter the Supreme Court, observing that it shall be open for the Government to proceed with finalisation of the scheme, by itself would indicate that the power of the State Government under Section 99 of the 1988 Act cannot be denuded in any form. Therefore, we have to consider the validity or otherwise of the 2009 scheme within the limited scope of the statutory powers available with the Government.

21. The contention urged on behalf of the petitioners that the scheme has to be proposed and finalised based on the understanding of the private operators on the basis of Ext.P3 order of the Government, according to us, will not stand in the way of the Government formulating a proposal in terms of Section 99 even assuming that Ext.P3 and the subsequent proposal was in the mind of the Government. Therefore, except for the fact that the manner in which the proposal of the scheme had come into force has to be looked into for the purpose of considering the validity of the

scheme, the fact that there was a promise on an earlier occasion by the Government not to affect any of the private operators will not be available to the petitioners. In other words, at the risk of repetition, we are of the view that the scheme has to be looked into within the parameters laid down under Sections 99 and 100 of the 1988 Act.

22. Therefore, even though there is a slight change in the statutory format with reference to Section 100 of the 1988 Act, still the Government while considering the objections, have to take into account the objections raised and pass appropriate directions. Whether the Government had actually considered the matter in its proper perspective is the only fact to be considered. In fact, a reference to the proposal made under Section 99 and the final notification under Section 100(3) would indicate as to whether there was any consideration of the objections raised by the petitioners.

23. For that reason, if we look at Clause 4 of the proposed scheme, it only contemplated private operators

who were granted permits on or before 09/05/2006 to continue till the date of expiry of the respective permits. Thereafter, the provision indicated that temporary permits alone will be granted to them and that too, if the STU does not apply for permits in the said routes. Now, coming to the approved scheme of 2009 there is a clear indication that the permits issued on or before 09/05/2006 will be allowed to continue till the date of expiry of their permits and thereafter regular permits will be granted to them. Therefore, there is clear indication that a claim for regular permit has been approved in the final notification. Similarly, in the draft notification, provision was made in regard to permits issued after 09/05/2006, stating that it shall not be renewed and neither regular or temporary permit shall be issued under any circumstances. The said situation in the draft notification has been modified by which in regard to persons who had obtained permits after 09/05/2006, there is provision to provide temporary permits on expiry of other

regular permits. Of course, being a scheme to exclude other persons, the permit shall operate only till STU replaces the said routes with new services. Therefore, it is clear that substantial modification had been made to the draft proposal and the rights of regular permit holders/private operators had been taken into consideration and they are offered either regular permit in respect of persons who were holding permits prior to 09/05/2006 and temporary permits for persons who were having permits after 09/05/2006. This, by itself, indicates a proper consideration of the materials on record and the objections raised by the petitioners to the draft publication. In regard to the other objections as well, when no change has been effected, it does not mean that their claim has not been considered. Under such circumstances, we are of the view that while considering the objections raised in terms of Section 100(2) of the Act, 1988, the Government had considered the objections raised and had modified the scheme substantially. This, by itself

indicates compliance of principles of natural justice. Therefore, we do not think that the respondent Government had fallen short of the judgments in **G.Nageswara Rao** (supra), **H.C Narayanappa** (supra), **Multi Purpose Co-operative Societies** (supra) and **B.A Lingareddy** (supra). Therefore, we are of the view that there is substantial compliance of the provisions under Section 100(2) of the 1988 Act and all the contentions urged by the petitioners in this regard fails.

24. Now coming to the 2009 scheme, though it is a new scheme framed under the 1988 Act, by issuing a proposal and finalising the same after hearing the objections, the 1966 scheme was in operation wherein also new regular permits could not have been granted as held in **Rahul Tom's** case (supra). Further, it was not possible for private operators to carry on operations in the notified route unless otherwise permitted under the scheme itself. Therefore, it was a stage where overlapping was not

possible at all or the overlapping was permissible only if the scheme provided such intersection or overlapping.

25. The 2009 scheme however recognises the right of existing permit holders. The arguments raised is with reference to Clauses 4, 6, 7 and 19. As far as clause 4 is concerned, it excludes all services other than that of STU. However, it is stated that permits issued in the private sector on or before 09/05/2006 will be allowed to continue till the date of expiry of the respective permits. It is further stated that thereafter regular permits will be granted to them. Further, clause 4 indicates that when the STU applies for introducing new services in such routes, corresponding number of existing private stage carriage permits in the said route, whose permits expire first after filing of the application by STU, shall not be renewed. In respect of permits issued after 09/05/2006, temporary permits alone will be issued until STU replaces with new services. The decision as to whether STU shall apply for permits to replace

the existing stage carriage shall be taken by the Chief Executive of the STU. In other words, as far as the existing permit holders who had obtained permits prior to 09/05/2006 are concerned, their permits will be renewed and they will be permitted to continue till the expiry of their permits and thereafter regular permits will be granted to them on condition that they will be replaced when STU introduces new services in any of those routes. But, as far as permits issued after 09/05/2006 is concerned, only temporary permits will be issued which will be replaced only till the STU replaces with new services. By this provision, we do not think that any substantial damage has been caused to the private operators. Even going by Ext.P3 Government order dated 31/12/2005, the offer was not to disturb existing operators. The first proposal was made on 09/05/2006. Therefore, the private operators having regular permits as on 09/05/2006 are concerned, their regular permits were entitled to be renewed subject to the condition that when

the STU starts operation in the same route, their permits will not be renewed. Therefore, the existing operators as on 09/05/2006 are classified differently and their rights are protected to a certain extent. Those permit holders who had obtained regular permit after 09/05/2006 restrictions have been imposed by which they are entitled to get only temporary permits until STU starts operation in the same route. Therefore we do not think that clause 4 of the scheme has created a situation by which the existing operators' rights have been totally taken away. For that reason itself, we do not think that the decision taken by the Government under the scheme is arbitrary.

26. Another argument raised by the learned counsel for the petitioners is based on Clauses 6 and 7 of the scheme. Clause 6 relates to maximum and minimum number of vehicles to be operated in relation to each area or route by the State Transport Authority and the answer given under the scheme is 'as per traffic demand'. Clause 7

relates to the maximum and minimum number of trips to be provided in relation to each area or route by the STU in the case of stage carriages in which also, the answer is 'as per traffic demand'. This vague answers to the scheme, according to the petitioners, is without a detailed study of the traffic requirement. It is argued that the purport of Chapter VI is to entrust with the STU the power to operate appropriate services to render an efficient transport system for the public at large. Therefore, until a proper study is conducted with reference to the traffic demand and the STU is imposed with an obligation to undertake such services, no benefit will be accrued to the public as far as the obligation of STU is concerned. 'As per traffic demand' is a very loose word which virtually nullifies the right of a private operator who demand that they should be permitted to carry on operation in a particular route. It is contended that the scheme is prepared in Form A, which being statutory requires all essential particulars to be filled up to ensure that

the scheme is validly published. Reference is made to the Constitution Bench judgment in **Shrinivasa Reddy and Others v. State of Mysore and others** [AIR 1960 SC 350]. In that case, the Supreme court held that when the undertaking decides to frame a scheme, it must take into account its resources in men, material and money and frame a scheme only to the extent to which it can carry it out in full. It is also held that the scheme to be framed must be such as is capable of being carried out at once. Another judgment relied upon is **A.Vishwanatha Rao v. State of Mysore** [AIR 1968 SC 1095]. That was a case in which an allegation was raised that the gap between minimum and maximum number of services was so great and it amounts to fraud. It was found that when State Government formed an opinion that the scheme will have to be sufficiently flexible, the gap between fixation of minimum and maximum number of vehicles is not so great as it amounts to fraud. In that case, in the approved scheme, the maximum number of

vehicles was 18 and minimum 1 and maximum number of daily services was 10 and minimum 3. It was argued that unless the maximum and minimum number of services and trips are mentioned, that will enable the STU not to operate any service. **Punjab Roadways Moga through its General Manager and others. v. Punja Sahib Bus and Transport Company & Others [(2010) 5 SCC 235]** is relied upon to contend that the provisions of the scheme including the list of routes and the ratio fixed are statutory in character which cannot be tinkered by the Regional Transport Authorities. Paragraphs 29, 30, 31 and 32 are relevant which reads as under:

“29. Section 99 of the Act deals with preparation and publication of proposal regarding road transport services of an STU which enables the State Government to formulate a proposal for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, by giving particulars of the nature of the service proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereof and

the Government is also empowered to publish such a proposal in the gazette in public interest. After calling for objections to the proposed scheme, and examining the same the scheme has to be published in accordance with the provisions of Section 100 of the Act. The scheme once published is law and Chapter VI has an overriding effect on Chapter V of the Act and it operates against everyone unless it is modified or cancelled by the State Government.

30. *The Scheme also provides for a ratio with regard to the grant of permits on the notified routes between STUs and private operators which is fixed based on the assessment made by the State Transport Commissioner, Punjab on the basis of the passenger road transport needs which is legally binding on all. The provisions of the Scheme including the list of routes mentioned in the various annexures, and the ratio fixed are statutory in character which cannot be tinkered with by the RTAs and have overriding effect over the powers of RTAs under Chapter V of the Act.*

31. *The power to cancel the Scheme or modify the Scheme rests with the State Government under Section 102 of the Act and the RTA and the Tribunal have committed a grave error in tampering with the Scheme as well as disturbing the ratio fixed by the Scheme by granting regular permits to the private sector from the quota earmarked for STUs. Once a*

scheme is approved and published, private operators have no right to claim regular permits to operate their vehicles in the notified area, route or portion thereof upsetting the ratio fixed. Since the Scheme makes provision for partial exclusion, the private operators are not completely excluded, they may get regular permits on the notified route or a portion thereof in accordance with the terms and conditions laid down in the scheme and within the quota earmarked for them.

32. *Therefore, a combined reading of Sections 99, 100 and 104 in the light of Section 2(38) of the Act, makes it clear that once a scheme is published under Section 100 in relation to any area or route or portion thereof, whether in complete or partial exclusion of other persons, no persons other than STUs may operate on the notified area or route except as provided in the scheme itself. Reference can be made to the decisions of this Court in Adarsh Travels Bus Service v. State of U.P., U.P. SRTC v. Anwar Ahmed and Ram Krishna Verma v. State of U.P.*

It was held that if the STU does not operate the service, it gives an opportunity to the RTA to grant temporary permit if there is a temporary need. In this case, when there is no specific mention of the number of services, such an

opportunity is lost to a private operator, is the argument. A Division Bench judgment of this Court in **Sachidananda Panicker v. Director of State Transport Department** [1959 KLJ 761] is relied upon to contend that a scheme prepared under Section 68C should contain the particulars of the nature of services proposed to be rendered, the area or route proposed to be covered and such other matters as may be prescribed. This is to enable the persons who are affected by the scheme to submit appropriate objections. If the relevant particulars are not made available, it does not amount to a scheme as contemplated under Section 68C of the Act.

27. On the other hand, the learned counsel for the respondents relied upon the following judgments:

i) **Sabir Hussain and another v. State of UP and others** [(1996) 1 SCC 626]

2) **Ramesh Chand v. State of U.P** [(1979) 4 SCC 776]

3) **B.H.Aswathanarayana Singh v. The State of Mysore** [AIR 1965 SC 1848]

4) **Kerala State Limited Stop/Stage Carriage Operators Association v. Government of Kerala** [2014 (2) KLT 135]

It is argued that the judgment in **Ramesh Chand** (supra) answers the issue, which has been followed in **Kerala State Limited Stop/Stage Carriage Operators Association** (supra).

28. According to the petitioners, in **Ramesh Chand** (supra), there was a specific provision which enabled the State Government not to mention the number of services which is not the factual situation in the present case. Therefore, **Ramesh Chand** (supra) cannot be a proposition to come to the conclusion that the number of services/trips need not be mentioned in a scheme and therefore the judgment in **Kerala State Limited Stop/Stage Carriage Operators Association** (supra) does not lay down the

correct law.

29. But, it is relevant to note that this is a notified route under a scheme right from the year 1966 and going by **Rahul Tom's** case (supra), no regular permit could have been issued to any operator in the said route and even intersecting the said route or traversing the said route was not permissible. Coming to the present scheme, it cannot be disputed that already several private operators are operating their stage carriages in the said route on the basis of a regular permit. Therefore, it is not a new scheme evolved in a particular route. There was in existence a nationalised scheme which was approved and enforced. It is now being superseded with another scheme taking into consideration the number of existing stage carriage operators as well. Therefore, in terms of Clause 4, the existing private operators' right to carry on service is saved to a limited extent and in respect of certain routes when there is no STU operation, temporary permits can be issued.

The scheme is a complete exclusion scheme with certain saving clauses and it permits traversing of the route upto 5% of the route length or 5 Kms whichever is less. Clauses 6 and 7 as envisaged by the Government apparently is an addition to the existing stage carriage operation by private operators as well as STU. The whole concept is to continue a transport service on the demand of traffic which has to be undertaken by the STU. True that the word 'traffic demand' is some what flexible. But, this is to enable the STU to carry on operations even when there is a temporary demand due to various reasons like festivals and other functions being organised where large number of people may assemble at a particular place.

30. In **Sabir Hussain** (supra), the Supreme Court followed **Ramesh Chand** (supra). However, no factual materials are available in the said case. In **B.H.Aswathanarayana Singh** (supra), Constitution Bench of the Supreme Court held that the particulars mentioned in

Section 68C in its ordinary meaning means details of items. The details of the nature of services proposed to be reckoned may not only be in the form of precise number of vehicles and trips but also in the form of minimum and maximum number of vehicles and trips on each route. This would also satisfy the requirement that particulars of the services proposed to be reckoned should be furnished which gives necessary information to enable the objectors to oppose the scheme area with reference to the adequacy of the services proposed to be reckoned. Further in paragraphs 7, 11, 12 and 13, the Constitution Bench held as under:

“7. Besides we are of opinion that a provision for a minimum and maximum number of vehicles and trips would subserve the purpose of Chap. IV-A inasmuch it will provide for a certain amount of flexibility in the service to be rendered, for it cannot be disputed that transport needs may vary from season to season. This flexibility provided by specifying the minimum and maximum would obviate the necessity of taking action under S. 68-E of the Act every time the Undertaking

decided to make a minor change in the number of trips with the necessary change in the number of vehicles employed. We cannot accept the argument that provision of a minimum and maximum number in the scheme would be hit by S. 68-E of the Act which provides for cancellation or modification of an approved scheme, for S. 68-E comes into play after the scheme has been approved under S. 68-D. Nor can the provision of flexibility by indicating the minimum and maximum number of vehicles and trips be said to be a device to get round S. 68-E, which deals with a situation after the scheme has been approved. But where a scheme itself provides for minimum and maximum number of trips and vehicles and has been approved, it cannot be said that such approval is meant to override S.68-E, for even such an approved scheme may require radical alteration after some years when transport needs may have radically changed and in such cases action under S. 68-E would be necessary. But this provision of flexibility providing minimum and maximum number in a scheme cannot per se be said to be an attempt to get round S. 68-E. "

"11. Then it is urged that whatever may be the position in a case of complete exclusion, fixing of minimum and maximum in relation to vehicles and trips could not be contemplated by S. 68-C where there is partial exclusion. Therefore if it could not be

contemplated in the case of partial exclusion it could not be contemplated in the case of complete exclusion also. It may be assumed that there may be some difficulty in working out a scheme containing minimum and maximum number of vehicles and trips where exclusion is partial as compared to a case where exclusion is complete. Even so we do not think that that would change the meaning of the word "particulars" used in S. 68-C and necessarily imply that the particulars given must consist only of an exact number of vehicles and an exact number of trips. Further we are of opinion that though it may be assumed that certain difficulties may conceivably arise in carrying out a scheme which includes minimum and maximum in the case of partial exclusion the difficulties are clearly not inseparable, and the Regional Transport Authority is there to work out the details where the scheme provides for a minimum and maximum number of vehicles and trips after taking into account the private operators who are allowed to ply their buses along with the Undertaking. The task of making a proper adjustment by the Regional Transport Authority is not inseparable and therefore, we are not prepared to hold that because exclusion can be partial, particulars required by S. 68-C with respect of number of vehicles and trips must be precise.

12. We are therefore of opinion that specifying of

both minimum and maximum number of vehicles and trips in the scheme under challenge is also in accordance with the provisions of S. 68-C and is not hit by S. 68-E. The contention of the appellants under this head is therefore rejected.

13. Then we come to the second main point raised in the case. It is urged that the draft scheme was framed when rules only required maximum number to be mentioned and the draft scheme mentioned the maximum. But in the approved scheme, this was modified and both the minimum and maximum were mentioned. So it is urged that as the minimum was not mentioned in the draft scheme which was in accordance with the Rules of 1960 as they then stood, it was not possible for the objectors to object with respect to the minimum which was introduced by the State Government by modification under S. 68-D of the Act. Therefore there was breach of principles of natural justice as the objectors had no opportunity to show that the condition precedent, namely, that the service was adequate, had been complied with. It may be accepted that there was a defect in the draft scheme inasmuch as it only indicated the maximum number of services and not the minimum. But we are here concerned with the approved scheme after it was modified by the State Government in accordance with S. 68-D of the Act. It is also not quite correct on the

part of the appellants to say that they could not object to the adequacy of service because the minimum was not mentioned. We find that quite a few of the objectors appear to have objected that it was not enough to mention the maximum only in the scheme and that in the absence of minimum the Undertaking might not run even one bus on a particular route. It was because of this objection that the State Government provided for the minimum in the scheme. The fact that there was some defect in the draft scheme would in our opinion be not fatal if the approved scheme as it finally emerges after the objections have been heard and decided under S. 68-D is in accordance with what is required by S. 68-C. Nor do we think that it was not possible for objectors to raise the question of adequacy of services where only the maximum is specified. The approved scheme cannot in our opinion be struck down if it is in accordance with S. 68-C merely because there was some defect in the particulars supplied in the draft scheme. We may in this connection refer to the case of Dosa Satyanarayanamurthy (1961) 1 SCR 642 : (AIR 1961 SC 82) where also there was a defect in the draft scheme inasmuch as in certain cases the number of vehicles to be operated on each route was not specified and one number was mentioned against many routes which were bracketed. An objection was

taken with regard to this matter and the scheme was modified accordingly. This Court upheld the modified Scheme and the same principle in our opinion applies to the present case where only the maximum was mentioned in the draft scheme and not the minimum. We do not think that there was any violation of principles of natural justice because objection was taken to the impropriety of only indicating a maximum in the scheme and that objection has been met by the State Government by modifying the scheme and including a minimum also. The contention therefore on this head must fail."

31. In **Kerala State Limited Stop/Stage Carriage Operators Association** (supra) one of us (myself) has relied upon the judgment in **Ramesh Chand** (supra) and observed that the requirement of minimum and maximum services is not mandatory and it is enough for the scheme to indicate that the services should be operated "as per traffic demand". It is argued that **Ramesh Chand** (supra) was decided on a peculiar factual circumstances. Both sides relied upon the aforesaid judgment. Therefore, it is necessary to address on the applicability of the said

judgment to the facts of the present case. In **Ramesh Chand** (supra) the Supreme Court was considering the question whether there is any conflict between Section 68C of the 1939 Act and Section 7 and 16 of the U.P Amendment Act of 1976. That was a case in which the scheme prepared under Section 68C did not specify the number of services to be provided. In **Sashikanth Rai v. RTA** [AIR 1978 Allahabad 68], it was held that if the particulars regarding the adequacy of the proposed transport services are not given in the draft scheme, then it will not be possible for the objectors to file any effective objection to the draft scheme in this regard and it would be difficult for the hearing authority to give its decision as to whether the draft scheme will be able to provide road transport services which would fulfill the purpose mentioned in Section 68C. Hence it was held that the draft scheme was defective. To get over the effects of the said decision, the Special Provisions Act, 1976 was introduced incorporating Sections 7 and 16 which reads

as under:

“7. Nothing contained in Section 68-C or Section 68-D of the Principal Act shall be deemed to require or ever to have required a specification being made in an approved scheme of the number of services to be provided.

16. Notwithstanding any judgment, decree or order of any Court, any scheme prepared or published under Section 68-C, or approved or modified under Section 68-D of the Principal Act or purporting to have been prepared, published, approved or modified shall not be deemed to be or have been invalid on the ground of the number of the services to be provided being not specified therein.”

32. The Supreme Court, in **Ramesh Chand** (supra), relying upon the judgment in **B.H.Aswathanarayana Singh** (supra) held that “it is thus clear that the exact number of vehicles and trips for each route need not be given and all that Section 7 of the Amended Act provides is that the draft scheme as well as the approved scheme need not specify the number of services. The decision relied upon

by the learned counsel makes it clear that the number of vehicles and trips for each route need not be specified. We are therefore unable to accept the contention that the failure to specify the number of services would invalidate the draft scheme or the approved scheme.” In other words, the opinion expressed by the Supreme Court was that dehors Sections 7 and 16 of the amended Act the principle of law that is applicable would be as that was held by the Constitution Bench in **B.H.Aswathanarayana Singh** (supra). Therefore **Ramesh Chand** (supra) squarely applies to the facts of the case. Therefore, the law laid down in **Kerala State Limited Stop/Stage Carriage Operators Association** (supra) still holds the field.

33. It is true that Form A contains a clause to specify maximum and minimum number of vehicles to be operated in relation to each area or route by the STU and the maximum and minimum number of trips to be provided in relation to each area or route by the STU. Primary aspect to

be considered is whether the scheme has come into effect in an area where an existing scheme is in operation. Clause 4 would clarify the issue that already the area is being operated by private sector as well as STU. Further, another scheme was already in force and the present scheme replaces the same. Therefore, the word 'as per traffic demand' has to be construed in the light of existing service to be operated by STU as well as private operators. When the Government has decided to ensure that the STU should take effective steps for operating in the scheme routes as per traffic demand, it makes it obligatory on the part of STU to operate services as per the demand. The demand may come in different forms from the public which has to be entertained, considered and appropriate services are to be operated by the STU. This is the very purport of the scheme and therefore STU cannot shy away from the responsibility to operate any services if there is a traffic demand in a particular locality covered by the City.

34. Yet another objection was regarding the authority of the Chief Executive Officer to take a decision in the matter. The said power is given in terms of Clause 4. The said power given to Chief Executive Officer cannot be said to be arbitrary as there has to be a decision making authority.

35. Under such circumstances, we are of the view that the challenge to the scheme is without any basis which is liable to be rejected.

Accordingly, these writ petitions are dismissed.

(ASHOK BHUSHAN, CHIEF JUSTICE)

(A.M.SHAFFIQUE, JUDGE)

jsr

