Delhi High Court Om Parkash Pahwa & Ors. vs State Of Delhi And Ors. on 25 August, 1998 Equivalent citations: 1998 VAD Delhi 285, 3 (1998) CLT 609, 75 (1998) DLT 3, 1998 (46) DRJ 719 Author: R Lahoti Bench: R Lahoti, C Mahajan ORDER R.C. Lahoti, J. 1. This common order shall govern the disposal of CWP Nos.3000/98, 2979/98, 3019/98, 3020/98 AND 3125/98 laying challenge to a public notification dated 15.6.1998 issued by the Govt of NCT Delhi under Section 100(3) of the Motor Vehicles Act, 1988 approving a scheme earlier proposed by a public notification dated 22.9.1997 under Section 99 of the Act. There are two sets of petitioners. CWP Nos.3000/98, 2979/98, 3019/98, have been filed by several private bus operators presently plying buses under Stage Carriage Permits.CWP No.3019 and 3020/ 98 by Ex-servicemen Bus Operators. 2. On 22.9.1997 the Govt of NCT of Delhi issued a public notice under Section 99 of the Act. The text of the notification is reproduced in exten-so inasmuch as the contents thereof are the core of controversy and would be required to be referred to throughout to appreciate the contending contentions advanced at the Bar. It reads as under :- GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI STATE TRANSPORT AUTHORITY 5/9 UNDER HILL ROAD DELHI-110054 PUBLIC NOTICE The following is the text of the notification under S. 99 of the Motor Vehicles Act, 1988 in Delhi Gazette Extraordinary : Part IV dated 22.9.1997 for the information of all concerned. Whereas by notice published in newspapers in January, 1992, a proposal of State Transport Authority Delhi to grant 3000 permits in order to meet the requirement of commuters and to augment public transport service in Delhi was brought to the general notice of the public for obtaining specifications of the proposal stage carriages, terms and conditions of permits and fare structure along with application from : And whereas in exercise of powers conferred under sub-section (3) of Section 71 of the Motor Vehicles Act, 1988 (Act No. 59 of 1988) the Lt Governor of the National Capital Territory of Delhi with the prior approval of Govt of India Ministry of Surface Transport, New Delhi was pleased to direct, vide notification dated 3.9.92 published in Part-IV of Delhi Gazette Extraordinary, the State Transport Authority, Delhi to issue 3000 new stage carriage permits for plying buses on various city routes in the national Capital Territory of Delhi, in addition to permit already sanctioned/granted to the general public as per the provisions and procedure as laid down in the Motor Vehicles Act, 1988 and rules framed thereunder ; And whereas stage carriage permits to private individuals in pursuance of the aforementioned scheme were issued; And whereas the Govt of National Capital Territory of Delhi in the light of the experience of service provided by private stage carriage buses held under individual stage carriage permits has come to the conclusion that such individually operated stage carriage buses cannot provide to the commuters of a metropolis of the size of Delhi with an estimated 13 million vehicular trips per day, of which 8 million are performed by mass transport a disciplined, reliable, efficient, adequate, economical and properly coordinated road transport service; And whereas the road accident statistics reveal that private stage carriage buses are involved in road accidents in far larger proportion in terms of the total number of such vehicles than is the case with the other categories of

vehicle in the National Capital Territory of Delhi and the number of total accidents caused by private stage carriage buses during 1996 was 407 leading to the death of 447 persons and the number of fatal accidents caused by private stage carriage buses in 1997 till 30.6.97 was 174 leading to 189 death; And whereas the general operating conditions of the private state carriage buses are far from satisfactory reflecting a level of managerial supervision which is not equal to the task of providing a disciplined, reliable, efficient adequate economical and properly coordinated road transport service in the National Capital Territory of Delhi. And whereas private stage carriage permit holders have not been brought under the purview of the Motor Transport Workers Act, 1961 leading thereby to employment practices inimical to public safety and the public interest; And whereas the public perception of the quality and nature of service provided by stage carriage buses operated under permits held by individuals has been of a negative nature. Now therefore in exercise of powers under S. 99 of the Motor Vehicles Act, 1988 the Govt of the National Capital Territory of Delhi is of the opinion that for the purpose of providing an efficient adequate economical and properly coordinated road transport service, it is necessary in public interest that the entire area defined as the National Capital Territory of Delhi be nationalised for the purpose of operating stage carriage bus services and that these stage carriage services should be run and operated by the Delhi Transport Corporation or any transport undertaking of the Govt of National Capital Territory of Delhi without prejudice to the kilometre scheme being operated at present by the Delhi Transport Corporation. In accordance with sub-section (2) of Section 99 of the Motor Vehicles Act, 1988 notwithstanding anything contained in sub- section (1) of S. 99 of the said Act, w.e.f. the date of this publication, no permit shall be granted to any person except a temporary permit during the pendency of the proposal contained herein and such temporary permit shall be valid only for a period one year from the date of its issue or till the date of the final publication of the scheme under S. 100 of the Motor Vehicles Act, 1988 whichever is earlier. In accordance with the proviso to S.104 of the Motor Vehicles Act, 1988 where no application for a permit is made by the State transport undertaking in respect of any notified area or notified route in pursuance of the final publication under Section 100 of the said Act of the approved scheme the State Transport Authority may grant temporary permits to any person in respect of such notified area of notified route subject to the condition that such permit shall case to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route. Further in accordance with sub-section (4) of Section 105 of the Motor Vehicles Act, 1988 where in exercise of powers under clause (b) or sub class (i) of clause (c) to sub-section (2) of Section 103 any existing permit is cancelled or the terms thereof modified so as to prevent the holder of the permit from using any vehicle authorised to be used thereunder for the full period for which the permits would otherwise have been the effective compensation payable to the holder of the permit for each vehicle affected by such cancellation of modification shall be computed as provided in clause (a) and clause (b) to sub-section (4) of Section 105 of the Motor Vehicles Act, 1988. This issues in exercise of powers under

sub-section (1) of Section 99 of the Motor Vehicles Act, 1988 Objections to the proposal may be filed in the office of the Secretary State Transport Authority, 5/9 Under Hill Road, Delhi-110054 as provided in sub- section (1) of Section 100 of the Motor Vehicles Act, 1988 and the State Government in accordance with sub-section Act, 1988 and the State Govt in accordance with the sub section (2) of Section 100 of the said Act may after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify the proposal. By order and in the name of the Lt Governor of National Capital Territory of Delhi Sd/ Archana Arora Special Commissioner (TPT) National Capital Territory of Delhi" 3. The above said notification under Section 99 led to the filing of 1916 objections to the scheme. Personal hearing was granted to individuals by three officers, namely, (i) Shri Rajesh Kumar, Dy Director Vigilance, Transport Deptt, (2) Shri S.K. Khosla and (3) Shri Ajijuddin Ahmed. 4. The objections were all rejected and finally the notification under Section 100(3) was issued on 15.6.1998. 5. The above said notifications under Sections 99 and 100 of the Act have been challenged on very many grounds, the principal of which and really pressed at the time of hearing may be noticed. They are :- (i) That the scheme is not in public interest. It does not take care of the principal ingredients of Section 99. Formation of the scheme must be for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service. Formation of any opinion which is devoid of the above said objectives pulls the carpet from below the legs of the scheme and it ceases to be in public interest. (ii) The K.M.scheme framed by the DTC is contrary to Motor Vehicles Act as well as the law laid down by the Supreme Court in Brij Mohan Parihar Vs. MPSRTC, . The scheme as such is unworkable. (iii) That the proposal has not been published in conformity with Rule 89 of Delhi Motor Vehicles Rules, 1993 nor does the hearing confirm to the requirements of Rule 90 of the Rules. (iv) That the hearing by the State Govt, as contemplated by sub- section (2) of Section 100 of the Act is mandatory. There has been no hearing by the State Govt in the eye of law. The proposal having been approved without satisfying the requirement as to hearing cannot be sustained as approved scheme. 6. In addition to the above said general grounds of challenge raised in all the petitions, the ex-servicemen have pleaded the following additional grounds of challenge : (i). That the notification under Section 99 takes care of bad performance of 3000 Red Line Buses which were granted permits in 1992 but does not take into consideration the excellent service rendered by ex-serviceman and Graduate Mini Bus Operators and hence the operation by ex-servicemen could not have been done away with. In other words the scheme is vitiated so far as ex- servicemen bus operators are concerned. (ii). That the ex-service men were given bus permits with the object of rehabilitating them. The Govt is estopped from with drawing the scheme on the principle of promissory estoppel. 7. According to the respondents, none of the grounds are sustainable in law. The Scheme has been prepared in public interest and takes care of all relevant considerations contemplated by Section 99 and 100 of the Act which have been kept in view in letter and spirit. There is

no infirmity in the scheme. It is in public interest. 8. The relevant facts and the historical background leading to the formulation of the impugned scheme and as pointed out by the respondents may briefly be noticed. Prior to 1992, bus service in Delhi was largely a nationalised affair. The buses were plied under Delhi Transport Corporation, a public sector transport undertaking, hereinafter 'DTC', for short. Very few stage carriage permits were issued to private bus operators. DTC was meeting the demand of the commuters plying its own buses and by engaging buses under 'kilometre scheme' and similar other schemes enabling private buses and private operator supplementing the operation by the DTC fleet of buses. The DTC operation has never been a profitable enterprise. It was yielding voluminous loss which was met by the Government. In 1992, decision was taken to privatise the city routes. Approximately 3000 permits were allotted to private bus operators in one go. More than 10,000 applications were received but on scrutiny more than 9000 individuals were found eligible. Since a limited number of permits were to be awarded, it was decided to allot permits to the eligible candidates by draw of lots. A policy decision was taken 'one-man-one-permit' The policy decision to allot permits by draw of lots and one-man-one- permit policy were subjected to judicial review in view of the challenge having been laid under the writ jurisdiction of the High Court which challenge was turned down. 8.1 The Govt of NCT Delhi having provided transport facility to commuters in Delhi consistently with the above said policy learnt a costly lesson at the end of about 5 years. It came to a conclusion that one -man -one-permit policy had brought more indiscipline on Delhi roads and not only indiscipline but also fatal accidents buses driven negligently and with rashness being a common sight on Delhi roads. A number of public interest petitions were filed in the Supreme Court and also in the High Court of Delhi against private operators. Stringent action of challenging the buses and cancelling permits also did not bring the desired results. In the opinion of the Government, the reason for all this indiscipline was that individual permit holders were only interested in their own individual profits whatever be the cost. In order to take more and more passengers they would not adhere to the time table, at times make departure from the route in utter disregard to the road safety and traffic rules. 8.2 As such, a decision was taken that since most of the permits given to private operators will be expiring in 1997, no further extension be granted to them and a scheme be formulated under Section 99 of the Motor Vehicle Act for operation of buses on Delhi roads by DTC. DTC, which was earlier under the control of the Central Government, was placed under the administrative control of the Government of national Capital Territory of Delhi in August, 1996 and the Government had also decided to provide subsidy to the same as transport service is an essential service and profit making cannot be the sole motive for the Government to run such a service. 9. The hearing as contemplated by Section 100 of the Act was allowed to objectors in a practical way in which it should have been done while formulating a scheme of the magnitude as the present one is, looking to the large number of objections. Larger interest of society has to be given its way in preference to the private interest of individual operators. There was no promise held out by the Govt to the ex-service men or the unemployed

graduates. The principle of promissory estoppel is not in the least attracted to the facts of the case. 10. We would now deal with each of the contentions raised setting out the relevant facts. Whether the Scheme is in public interest: Re Sec 99 ? 11. The principal submission of the petitioners centres around Sections 99 and 100 of the Motor Vehicles Act, 1988 which are reproduced hereunder for ready reference: "99. Preparation and publication of proposal regarding road transport service of a State transport undertaking. Where any State Govt is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Govt may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Govt formulating such proposal deem fit." 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 Govt. (2). The State Govt 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 Govt making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route." 12. A bare reading of Section 99 highlights a few considerations which the legislature has chosen to engraft in the provision, which have to be kept in view while framing the scheme. Firstly, the 'necessity in the public interest' is the governing and paramount consideration in the context of any proposal regarding any running or operating of road transport service by a State Transport Undertaking. Any proposed operation by STU to the exclusion, complete or partial of other persons or otherwise must withstand the test on the anvil of 'necessary in the public interest.' Secondly, the expression-'necessary in public interest' is not left wide or unbridled. It is controlled by the purpose of providing an efficient, adequate, economic and properly coordinated road transport service. These are four ingredients or quality of the purpose which the legislature obliges to be achieved without which the scheme would not be in the public interest. Thirdly,

the scheme is not akin to complete nationalisation inasmuch as it permits its being only partially exclusionary of other persons or otherwise, Fourthly, the proposal to be converted into a finalised scheme must pass through the process of objections being invited, heard and determined in the manner contemplated by Section 100. 13. The use of the phrase 'necessary in the public interest' may usefully be compared with the phraseology utilised by the legislature in Section 4 of the Land Acquisition Act, 1894, where an acquisition can be notified in the event of any land being 'needed for any public purpose'. There the scope of expression 'public purpose' is not static, it may change or vary with times and context. The legislature has chosen not to qualify or re-strict the meaning of public purpose which may take its colour from its ordinary dictionary meaning. In Section 99 of the Motor Vehicles Act, 1988, as already stated, the expression 'necessary in the public interest' has to take its colour from the preceding qualifying words which are efficiency, adequacy, economy and properly coordinated road transport service. 14. In Adrash Travel Bus Service and another Vs. State of U.P., , challenge was laid to a scheme formulated under the predecessor provisions corresponding to Section 99 and 100 of the present Act. Vide para 7, their Lordships emphasised that the great convenience or inconvenience which may be caused to the travelling public is a factor which will necessarily have to be taken into consideration before publishing the scheme by STU under Section 68-C by the Government under Section 68-D of the Motor Vehicles Act, 1939. While making a departure from the present operating system and substituting it by a new one, on the inconvenience likely to be caused by travelling public being brought to the notice of the Government the advantages conferred on the public by nationalisation of the route shall have to be weighed against the inconvenience likely to be suffered by the public wanting to travel. Vide para 14, their Lordships have cautioned that care must be taken to protect the interest of the travelling public and such care should not be mere care but good and sufficient care. 15. We may take stock of the fact situation as it prevails today. We may also look at the DTC and the quality of service which it is rendering as on the day. It is necessary to do so, so as to find out whether the expectation of the State Government from the DTC in whom it is proposing to con-fide the legislative trust of 'the necessity in the public interest' is merely a wishful thinking accompanied by obstinacy merely or there has been a cool headed rational thinking over relevant factors for achieving the purpose of providing an efficient, adequate, economical and properly coordinated road transport service. 16. During the course of hearing the learned counsel for the petitioners brought to our notice a document entitled 'Operational Statistics' which is an officially published document of DTC though meant for departmental use. It appears that the publication is brought out every month. It incorporates anatomy, physics and picture of performance of the DTC. Two documents of Operational Statistics referable to March, 1998 and April, 1998 have been brought on record along with the affidavit filed by way of rejoinder. In the succeeding paragraphs we propose to set out the relevant data extracted from the said documents. 16.1 In April, 1998, the DTC had a fleet of 3923 buses of which 2672 belonged to DTC and 1251 belonged to private operators (attached with DTC) . Out of 2672

buses owned by DTC, 803 are of an age of 10 years & above, and 523 are of an age around of 8-10 years. 16.2 At the end of the financial year 1996-97, the DTC had an accumulated loss of Rs. 236154.22 lakhs. The net loss incurred during the year 1996-97 itself was Rs. 28372.57 lakhs. The loss suffered worked out to Rs. 17.62 per kilometre of DTC operation. Though the DTC had 1913 buses in its fleet, operating in the city, the average number of buses on roads in the city in the month of April, 1998 was 1733 in the city. 16.3 The DTC carried 567.76 lakhs of passengers in the city during the month of April, 1998. Out of these 287.24 lakhs were ticketed while 280.32 were pass holders. 17. A copy of the affidavit filed on 1.9.93 by Shri P.Vijayan, Director, Ministry of Surface Transport New Delhi(from the record of Suman Doval v. UOI [1993 (3) AD Delhi. . . .] has been filed as Annexure RA-3 with the rejoinder. A few excerpts therefrom will be of relevance which are extract-ed and reproduced hereunder : "However, DTC has been incurring losses year after year on account of uneconomical fare structure, rising wage bills and input costs increase. Its capital development as well as working losses are being met by interest-bearing loans provided by the Central Govt. Due to its continuing losses neither the principal nor the interest on loans taken from Govt are repaid by the DTC. On account of inadequate resources the DTC has not been able to augment its fleet to the required extent. It has been incorporating the services of the private operators under one scheme or the other to supplement its services. The private operators used to operate under the DTC under schemes called Administrative and Operational Control Charges (AOCC), kilometer age and 'Earn and Keep'. 17.1 Vide para 5, an excerpt from the judgment of the Supreme Court dated 22.11.91 in CWP 1345/89 has been quoted as under :-"We see no justification in the petitioners' stand. More operators mean healthy competition and sufficient transport system. Over-crowded buses, passengers standing in the aisle, persons clinging to the bus doors and even sitting on roof tops are some of the common sites in the country. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats, continuous emission of black smoke from the exhaust pipe." 18. The above said is the factual state of affairs as reflected by the document of Operational Statistics. To this may be added what is everyday experience and common knowledge of the citizens who happen to witness the moving traffic on Delhi roads every day. 18.1 The petitioners in CWP 2969/98 have brought on record a few photographs along with their rejoinder. Overloaded and broken buses are the common sight. The DTC bus bearing registration No. DLP 9691 can be seen with the rear wind screen completely missing and overloaded passengers protruding out from the open window. Photographs after photographs show not only the passengers travelling on the footboard and hanging on to backside bumper and men trying to find out a toehold on the footboard of overcrowded bus blissfully unaware of the risk essentially involved in such travelling and there are still people chasing the moving bus somehow to catch it by trying to cling to any part thereof which can be used as a means to which the passenger can hold on and keep at least hanging to the bus, if not get in. DTC bus DLP 1179, can be seen with good number of passengers travelling on the roof top and few others on the back stairs leading to the roof. A few photograph show badly

broken/damaged and rusted bodies of the buses with the headlights and sometimes the wind screen broken. 18.2 Overloaded jeeps and trucks with human beings do not tell the story of DTC buses but do tell the demand of commuter public in Delhi which the transport system has failed to successfully respond. Buses standing by the road side deserted by the passengers and the staff as well because of mechanical failure / break-down or any other defect can be seen on any road any day and any hour of the day and night. 19. Hundreds of writ petitions filed in this Court which come up for hearing before different benches show good number of departmental enquiry proceedings rotting for years. The charges framed against the employees range anything from simple indiscipline to grave misconduct, embezzlement, misappropriation, highhandedness and the like. In the writ petitions, the proceedings, their initiation and sometimes the final orders passed therein are challenged either on merits or for non-compliance with the procedural provisions or the rules of natural justice and sometimes on the ground of incompetence on the part of authority initiating or conducting the proceedings. This large scale litigation between the employees/labour and the management of DTC goes to show failure on the part of the management in disciplining the staff and inculcating work culture and service spirit in them. It also shows the serious labour unrest which exists in DTC. The increasing litigation year after year shows near impossibility in DTC to eradicate the chronic diseases with which it is infected, some of which are cancerous. To this add the increasing tendency on the part of employees of PSUs resorting to strikes used as a pressure tactic to kneel down the management surrendering to the demands of striking employees for any cause -just or unjust, much to the chagrin of the people whom they are meant to serve. 20. The three officers deputed for hearing the objections under Section 100 of the Act have prepared detailed notes setting out the gist of the objections submitted before them in writing or orally by the several objectors. The objections are revealing and could not have been brushed aside merely for the sake of their being disposed of. They needed a serious thought and application of mind by the deciding authority. In the context it is proposed to extract the following excerpts from the note dated 19.1.98 prepared by Mr Rajesh Kumar, Deputy Director (Vig), Transport Department :- "During the course of hearing many operators reiterated that there is no complaint against their buses, they have several years of practical experience, they have no other job than this and the complete family is fully dependent on this. The representation submitted by the various objectors during the time of hearing is enclosed in the linked file for perusal. The Delhi Private Bus Operators Association stated that presently DTC is charging Rs.10/- per trip and Rs. 250/- per month from private bus operators for stand fee but this money goes to the DTC for paying pay and allowances instead of doing welfare of commuters. Therefore, DTC/Govt is responsible for accidents/lawlessness in the bus service of Delhi and the poor private bus operators are unnecessary blamed. They have further mentioned the factors responsible mainly for accidents which are as follows : 1) There is no unified time table. 2) 40% of commuters of Delhi like Police, DTC staff, Home guard, students, etc travelling free of cost in private buses and do not care for safety measures, board/alight,

wherever they like. 3) Buses cannot move in their lanes due to encroachment on roads by shop-keepers, auto-rickshaws, taxis, etc. 4) Extension, diversion of roads, repair, etc. 5) Red light, traffic police, VIP movement, carelessness by road users. 6) 30 years old time table is in operation though the traffic has since increased many fold. 7) There is no time keeper, causing unhealthy competition. 8) Police and the STA, the two agencies which are responsible for smooth operation of buses in the capital are too corrupt to take care of operation of the buses. 9) There is no proper driver training school for HMV licences, where a person can get proper training. 10) There is acute shortage of drivers for buses because badges are not being issued by the STA frequently. 11) Other factors are mechanical failure, natural disturbance, electrical poles etc. They further stated that nationalisation is not the solution of accidents. The person responsible for the accident is not being penalised and the poor bus owners are being penalised by imposing heavy penalty for minor offences and suspension/cancellation of permits. No reply is received from STA whenever a request is made by a bus owner." 21. Why in the year 1992, Delhi had chosen to switch over to privatisation of bus service? To quote from a paper very ably prepared and presented by Ms Kiran Dhingra, Commissioner-cum-Secretary, Transport Deptt in a workshop on 'Delhi Transport System- Priorities and Action Plan' and available in the records made available by the respondent for the perusal of the court:- "In 1992, Delhi became the first city to adopt privatisation of bus services in a large way. Accumulating losses, a militant DTC staff union, depleting bus strength and the growing public criticism of DTC were among the factors that led to the birth of the red line bus system in Delhi to provide an alternative means of mass transport to the commuter." 22. In any public undertaking, in a welfare State, some of these problems are bound to occur and they can be taken care of by the law but not when legitimate hopes are belied by disproportionate dimensions assumed by the problem. We may not be understood even for a moment, commenting on the working of the DTC, nor are we drawing any conclusions as such but we are touching the several aspects only with a view to highlight and see if there has been application of mind by the State Government to all these relevant facts while taking a decision on the availability in the scheme of the factors like efficiency, economy, etc. Have those in whom the Motor Vehicles Act, 1988 vested the discretion to form an opinion under Section 99, taken care to read the lessons of experience taught by hitherto operation of the DTC so as to arrive at a correct opinion whether the DTC would be in a position to provide efficient, adequate, economical and properly coordinated road transport service without which it would certainly not be in the public interest to formulate the proposed scheme. 23. The ex-servicemen in their petition have put forth an additional consideration as strong argument in support of continuing the transport operation by them. They have submitted that so far as they are concerned, their operation has been practically flawless. They are not responsible for road accidents. At least the number of accidents which can be put to their debit is minimal. Their operation is most disciplined and in accordance with the law, they claim. They have stood by the needs of the public and kept them in high priority and in fact they have bore the entire

burden of transport services in those times when DTC employees proceeded on strike totally unmindful of the great inconvenience and humiliation to which the travelling public is put literally holding the government, the management and the commuter public to ransom. 24. Public sector undertakings have mostly proved white elephants and continue to prove so as the years of independence roll by on a pathetic way. Where have we gone wrong, is the matter independently to be dealt with by the experts. The fact remains that there is hardly any public undertaking which has really yielded profits. There is hardly any PSU which can compete with the private sector. We are aware that the utility of public services is not to be measured only on the formula of commercial viability. The State activities cannot and must not remain confined only to such spheres where profits can be earned. In a welfare State, it is only the State which can undertake operation of such services which are of utility and serve the citizenry without regard to profitability of such enterprises. We are not suggesting in the least that the DTC operation has to be stopped solely because of its earning huge losses running into crores of rupees. We are only emphasising the need to take care of factors like efficiency, adequacy, economy and properly coordinated road transport service which the Parliament has itself chosen to emphasise by engrafting these as relevant factors, while giving shape to Section 99 of the Act. Can a scheme entrusted to an undertaking like DTC in the light of the factual information noticed hereinabove be expected to satisfy the demands of public interest ? We are not substituting our opinion for the opinion of the Government. But we are within our jurisdiction questioning were the framers of the scheme alive to all these paramount considerations before the proposal was mooted? And then the question of the questions_ whether the Government while forming an opinion on the finalisation of the scheme was conscious and aware of the need of testing the scheme on the touchstone of the question, "whether the DTC entrusted with the heavy responsibility of taking over the entire operation in the capital city of Delhi would be able to provide an efficient, adequate, economical and properly coordinated road transport service and thus satisfy the test of the scheme being necessary in the public interest. 25. We will revert back to this issue again but a little later when we would sum up our conclusions after dealing with the other contentions. KILOMETRE SCHEME_ does it fall foul of Brijmohan Parihar's case ? 26. The next attack on the sustainability of the Scheme is by reference to Kilometre Scheme being an integral part of the Scheme under Section 99. It is submitted by the learned counsel for the petitioners that in order to meet the requirement of commuters and to augment public transport service in Delhi, the scheme does not propose to abolish the operation under the kilometre scheme already in vogue. In other words, the State Govt is consciously aware of the fact that the DTC with its present fleet performance status and resources cannot take over the transport services for Delhi. Its shoulders and muscles are not strong and tough enough to carry the weight of Delhi transport service needs. It must be aided and assisted by extra DTC crutches. Therefore the scheme proposes to fulfill the demands of Section 99 by thriving on the KM scheme as well. If the KM scheme is by itself illegal and unworkable under the law and falls to the ground, it would take

the Section 99 Scheme along with it. 27. The contention so advanced on behalf of the petitioner needs a little bit of elaboration to appreciate the same. The ultimate of Section 99 Scheme is that about 5500 buses are needed on roads to serve the needs of every day commuter public in Delhi. The DTC has 2600 to 2700 (approx) buses available. It proposes to have about 2000 buses (approx) under the kilometre scheme unmindful of the fact, as will be seen shortly that the kilometre scheme is nothing but illegal trafficking in permits. The DTC proposes to push away the private operators from the roads of Delhi but it cannot. As it is incapable of taking over on itself the heavy burden of traffic, the blue line, and the red line operators (as they are called) are being pushed off from the front door but at the same time being allowed entry by the back door under the label of kilometre scheme which falls foul of the law laid by the Supreme Court in Brij Mohan Parihar v. MPSRTC . 28. The Kilometre scheme has been filed as Annexure-H (at page 132) in CWP 3000/98. The document is entitled- 'DTC Kilometre Scheme For Engagement Of Private Buses, 1997' and is prized at Rs. 250/-. It runs into 32 printed pages. It is not necessary to reproduce the entire scheme in this judgment but the relevant clauses need to be dealt with. 29. The gist of KM scheme is as under : 29.1 The DTC proposes to engage private buses which would operate under DTC. The buses of model with registration from December,l 1992 onwards can be engaged though preference will be given to the brand new buses. The registered owner of the bus will be allowed 225 guarantied KMs per day. Rates for engaging the bus per kilometre are negotiable subject to final determination by the DTC. 29.2 Driver with prescribed uniform has to be provided by the owner of the bus. Allotment of route(s) is in the sole discretion of DTC. A security amount of Rs. 10,000/- per bus will be deposited by the owner at the time of engagement of the bus. Liability of accident and for compensation claims is of the owner and not of the DTC. Responsibility of keeping the bus roadworthy by carrying out the necessary repairs at his own cost is of the registered owner. The bus has to be made available by the registered owner for inspection by any one under the direction of the Chairman/Managing Director of the DTC. The DTC passholder passengers or any seasonal or special tickets issued by the DTC are to be honoured by the private operators. 29.3 The registered owner may be allowed to transfer the registered ownership to a third person but not in the first two years and the last one year in a period of six years of the life of the bus. All the statutory provisions including those made under the labour enactment shall be abided by the registered owner. The owner is responsible for defending the driver before the criminal and /or civil court and also before the motor accidental tribunal. In case of break down/ accident/ scuffle etc the registered owner must provide a substitute bus so as not to disrupt the scheduled service. All expenditure on the operation, maintenance of the bus are to be incurred by the registered owner who should also attend to break down of the buss at his own cost. The registered owner must bear the full responsibility for payment of compensation under any law or enactment and under no circumstances the DTC shall be responsible for any legal action. So is the clause for compliance with the statutory obligations under labour laws or any other enactment for the

benefit of the employees. 29.4 Then there are the schedules of lapses/defaults-major and minor, which may lead to termination of the agreement. 29.5 Broadly speaking these are the terms and conditions which are the liability of the private operator. What are the obligation of the DTC ? 29.6 The DTC will only provide a conductor who would be on the bus. He would collect the fare, wherein the private operator has no share. The private operator has to be paid at the rate of per kilometre for the length covered by the bus during operation under the scheme. 29.7 The above, in short is the KM scheme. 30. In Brij Mohan Panihar's case (supra) the petitioner was an unemployed graduate who entered into an agreement with MPSRTC to ply the bus as a nominee on the route Gwalior to Chinor for a period of five years, the permit whereof was held by the Corporation. The said operation was contemplated by a programme called 'half-a -million-job programme' initiated by the Govt of India and adopted by the State of Madhya Pradesh. The route was covered by an approved scheme published under Section 68-C of the Motor Vehicles Act, 1939, Section 68FF provided that no private operator could operate on the route covered by the scheme. Their Lordships held :- It is, however, not permissible under the Act for the Corporation to obtain a permit under Chapter IV-A of the Act and to allow a private operator as its nominee to operate under that permit his motor vehicle as a stage carriage on the notified route. It cannot by granting such permission collect any money either as nomination fees or as royalty or supervision charges. Section 59 of the Act which lays down the general conditions attached to all permits provides that save as provided in Section 61 of the Act a permit shall not be transferable from one person to another except with the permission of the Transport Authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit. Section 61 of the Act only deals with the question of transfer of the permit on the death of the holder of the permit in favour of his successor. S. 42 of the Act provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used. Section 42 and S. 59 of the Act which are in Ch VI of the Act apply to permits issued under Chapter IV-A of the Act also since in Ch IV-A of the Act we do not find any provision which is inconsistent with these two sections. Section 68-B of the Act only provides that Ch IV-A of the Act and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Ch IV of the Act or any other law for the time being in force or in any instrument having effect by virtue of any such law. Even through the Corporation is established by the State Govt under the Road Transport Corporation Act, 1950 and the State Govt has by an executive order approved the action of the Corporation to allow private operators to operate their vehicles under the permits issued to the Corporation as the nominees of the Corporation, the Corporation cannot in law allow its

nominees to exploit the permits by running their motor vehicles against payment of some amount to the Corporation since there is no statutory provision authorising the grant of such permission. It would have been different if there had been a law corresponding to the Uttar Pradesh Motor Vehicles Special provisions Act (12 of 1976) under which the competent authority can authorise such operation subject to the conditions specified therein. (See Sumer Chand Sharma v. State of U.P.). The provisions of the Act and in particular Section 42 and 59 clearly debar all holders of permits including the Corporation from indulging in such unauthorised trafficking in permits. The agreement entered into by the petitioner with the Corporation is clearly contrary to the Act and cannot therefore be enforced. In the circumstances, the petitioner is not entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee. It follows that the advertisement issued by the Corporation is equally ineffective. The position would not be different even where the permit is issued in favour of the Corporation under Chapter IV of the Act. If the Corporation cannot run its vehicle under a permit issued to it, it must surrender it so that the Regional Transport Authority may grant the permit to some other deserving applicant or it must transfer it to somebody else with the permission of the Regional Transport Authority granted under Section 59 of the Act. It cannot however allow the permit to be used by somebody else to run his vehicle either for consideration or without consideration. If it does so it would be exercising the power of the Regional Transport Authority. The Corporation cannot thus indirectly clutch at the jurisdiction of the Regional Transport Authority. It is hoped that the Corporation will desist from entering into such agreements with third parties which are wholly illegal and from continuing to allow them to run their vehicles as its nominees. The concerned Regional Transport Authority should immediately take action to stop such illegal operation of transport vehicles on all routes, both notified and non-notified routes. (para 3)" 31. The view was reiterated by their Lordships in Vikram Shitoley and Ors Vs MPSRTC, . Unemployed graduates were permitted under a scheme, known as the self-employment scheme, to operate the stage carriage subject to certain terms and conditions on the notified route covered by Section 68-D(3) of the Motor Vehicles Act, 1939. Their Lordships observed that the scheme under Section 68-D is law by itself. The State Road Transport Corporation had obtained the permits and therefore, no one except the Corporation shall exclusively ply the stage carriage on the notified route in terms of the scheme itself. The self-employment scheme was,therefore, obviously illegal. The Corporation could not be granted permission to collect any money either as nomination fees or as royalty or supervision charges. 32. In M.C. Mehta Vs. UOI & ors, , the Supreme court has given certain directions to the State Transport Authority one of which is (para 4) :- "The grantee of a permit cannot (without express prior permission) under the provisions of the Motor Vehicles Act either transfer his permit or to allow some other person to operate a vehicle on this permit. Any such use of permits- which really constitutes a trading in permits- is a patent violation of the Motor Vehicles Act and the Rules and would

render the permit liable to cancellation apart from other legal consequences. We direct the authorities not to renew any permit which has been or is being used by any person other than the original grantee without the express prior permission of the grantee (sic grantor)." 32.1 The learned counsel for the petitioners has pointed out that pursuant to the said judgment, the STA had cancelled a large number of permits granted to the private operators who were plying their vehicles on the basis of power of attorney. 33. It cannot be denied that in the matter of permits and the law governing the same, the DTC does not enjoy a better status than any other operator merely on account of its being a State Transport Corporation [See: Ishwar Singh Bagga Vs. State of Rajasthan, 1987 (1) SCC 102.]. 34. Vide para 7 of the affidavit of Shri P. Vijayan, Director, Ministry of Surface Transport, New Delhi dated 1.9.93.(referred to in para 17 above) has been quoted the Govt's own stand that under the new Motor Vehicles Act, 1988, the operators providing buses to operate on permits obtained by DTC is prohibited."Section 66 of the Motor Vehicles Act, 1988 states that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of permit granted or countersigned by a Regional or State Transport Authority.". The affidavit goes on to say the Ministry of Law and Justice having advised the Ministry of Surface Transport that the DTC cannot obtain permits for vehicles owned by private owners. 35. The learned Addl ASG has, however, submitted that kilometre scheme does not amount to trafficking in permits by the DTC. The DTC, because it does not have the requisite fleet strength immediately, is hiring-in private buses and there is nothing wrong in doing so inasmuch as the complete operation of the buses is under the control of DTC which collects the fare as well and what is paid to the private operator or the bus owner is merely hire charges which for the purpose of calculation have been related to kilometres run by the bus. The learned ASG referred to Section 19(2)(h) of the Road Transport Corporation Act, 1950, which gives power to the Corporation to purchase or otherwise secure by agreements vehicles etc or any other article owned or possessed by the owner of any other undertakings for use thereof by the Corporation for the purpose of its undertaking. The definition of the word 'owner' as given in Section 2(30) of the Motor Vehicles Act, 1988 was also referred to. However, we are not impressed. 36. Section 2(30) of the Motor vehicles Act, 1988 reads as under : - "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement." 36.1 Without dwelling much on the definition, it is clear that an agreement between bus owner and DTC under the kilometre scheme is neither a hire purchase agreement, nor an agreement to lease much less an agreement of hypothecation. 36.2 The possession of the vehicle under kilometre scheme is certainly not transferred to the Corporation. The possession and even control of the vehicle remains with the owner of the bus i.e. the private operator. All that the DTC does is to regulate

its operation by placing its conductor on the bus. The conductor has hardly anything to do with the vehicle. He is merely to issue tickets and collect the fare. 37. Reliance on behalf of the respondents on Section 19(2)(h) of the Road Transport Corporation Act, 1950 is entirely misconceived.Firstly, the provision which empowers the STU to purchase or otherwise secure by agreement vehicles etc speaks of such things being owned or possessed by 'the owner of any other undertaking'. It is doubtful if the last expression would include private operators. Secondly the RTC Act 1950 is a general law which cannot override the provisions of MV Act 1988 which is a special law dealing with permits. In any case Section 19(2)(h) aforesaid cannot be utilised or so interpreted as to shield trafficking in permits expressly prohibited by MV Act and the law laid down by the Supreme Court. 38. Reliance was paced by the learned ASG on Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari, 1997(7) SCC 81 wherein their Lordships have held by reference to Section 2(15) of the Motor Vehicles Act, 1939 that the definition of the owner given therein was not exhaustive and therefore, needed to be construed in a wider sense in the facts and circumstances of the case. Their Lordships construed the expression 'owner' to include in a given case a person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. The law so laid down is of little assistance to the respondents and this we say for more reasons than one. Firstly, it was a case of claim arising out of motor accident and in that context the definition of 'owner' was interpreted by their Lordships. Secondly, it was not a case where the legality of an agreement between the owner of the bus and the Corporation was in issue. Right or wrong, the bus was being plied by the Corporation on a permit held by it. The services of the driver were transferred along with complete control to the SRTC under who's order, instructions and command the driver was to ply or not to ply the ill fated bus on the fateful day. The privity of contract was between the passengers and SRTC and not with the owner of the bus at all. On these findings their Lordships upheld the liability for compensation arising out of the accident being fastened on the SRTC. 39. Section 82 of the Act puts an embargo on transfer of permit by providing that no permit shall be transferable from one person to another except with the permission of the Transport Authority except in the case of death of the permit-holder. Vide Section 86(1)(c) the Transport Authority issuing the permit may cancel or suspend it if the holder of the permit ceases to own the vehicle covered by the permit. Thus, the scheme of the Motor Vehicle Act shows that a permit is not to be issued to a person not arising a vehicle to exploit it. A permit is identified with the vehicle too. If the DTC proposes to have a permit in its name but does not own a vehicle to be used against the permit and still choses to utilise the permit by making use of some other vehicle which is neither owned nor possessed by it, it would mean trafficking in permit. 40. It was submitted by the learned ASG assisted by Ms Avnish Ahlawat the learned counsel for the respondents that the requirement projected to satisfy the need of the commuting public Delhi was 7500 buses but the Delhi roads cannot bear the load of such a huge fleet of buses and for that matter the route rationalisation exercise has been undertaken by the Road

India Technical and Engineering Services and as per their report approximately 5500 buses will be required on Delhi roads to meet the demand. As on the date as many buses are on the roads as were in August, 1996. Under the KM scheme more buses are coming to DTC. Besides DTC was also augmenting its fleet in phases by adding 827 buses by March, 1998 and 1500 urban low floor city buses. 41. We are not satisfied with the explanation so offered. The promulgation of the scheme sends all the private operators off the roads on the cut off date and the DTC takes over overnight. As the KM scheme falls foul of the law it cannot be sustained and cannot be accepted as a workable substitute for the ownership and availability of the requisite number of buses under the DTC fleet. The submission that a good number of private operators have already strengthened the DTC fleet by subscribing to the KM scheme while others are waiting for the result of the present petitions which if decided favourably to the respondent would persuade- rather stimulate- the remaining private operators into subscribing to KM scheme has thus to be ignored. The scheme is a composite one and if the KM scheme part of it withers away then the remaining scheme cannot successfully withstand the test of public interest as it ceases to be capable of providing adequate and properly coordinated road transport service. 42. Add to this the consequences flowing from the recent directives of the Supreme Court given on 28.7.1998 the date on which the hearing in these petitions was concluded, but which have come to our notice before delivering the judgment. In M.C. Mehta Vs. UOI, (74) 1998 DLT 561, their Lordships have noted is that measures proposed and the time frame fixed by Bhure Lal Committee in the interest of protection and improvement of the environment in Delhi. Relevant for our purpose are :- 1. Augmentation of public transport (stage carriage) to 10,000 buses by 1.4.2001. 2. No 8 years old buses to ply except on CNG or other clean fuels by 1.4.2000. 3. Entire city bus fleet (DTC and private) to steadily convert to single fuel mode on CNG by 31-3-2001. 42.1 Their Lordships of the Supreme Court have approved the suggestions and the time frame so fixed by incorporating the same as directions by the Supreme Court coupled with a mandate that they shall be strictly adhered to by all the authorities. 42.2 Their Lordships have also expressed their view that to arrest the growing pollution of air certain steps need to be taken immediately and have, therefore, directed to arrest the plying of commercial vehicle including taxis which are 15 years old by 2.10.98. 42.3 In view of the directions of the Supreme Court such of the buses as are 15 years old, shall have to stand eliminated from the DTC fleet by 2.10.1998. So also DTC shall have to comply with the directions as to 8 years old buses. It cannot be foretold whether the DTC would be able to do so. In any case, the Scheme shall have to take care of these directions which are the law of the land. 43. We cannot leave unnoticed at this stage yet another submission of the learned counsel for the petitioners who has been at pains in demonstrating by reading the kilometre scheme clause by clause that with a payment of Rs. 10/- or so per kilometre which DTC pays to the bus operators, weighed against the number and nature of obligations cast on the private operators no subscriber to the scheme would really be in a position to successfully operate. The operator shall have to maintain the staff, garage and workshop

over and above the running expenses which is practically an impossibility to do within the amount offered by the DTC as kilometre charges. 44. In the absence of the requisite material being available on record, we are not recording any finding on this aspect of the issue and we leave it there only except for noting that this is possibly yet another reason why kilometre scheme has to be branded as unworkable. Does the hearing done satisfy the requirement of S. 100(2) ? 45. The proposal under section 99 having been published in the manner contemplated by sub-section (1) of Section 100, objections are filed, they have to be heard, considered and disposed of by the State Government under sub-section (2). Consistently with the decision the proposal may be approved or modified or rejected. 46. In Sindhi Sahiti Multipurpose Transport Cooperative Society Ltd Vs. State of MP , their Lordships have held by reference to Section 68-D of 1939 Act :- "It is not only competent but also conscionable that a scheme for nationalisation can be complete or partial. The efficiency as well as adequacy of the scheme is advanced by such policy decisions of complete or partial nationalisation of routes. It is a matter of policy as to what routes should be curtailed for the operation of the scheme. Courts do not judge such policy decisions. Under Section 68D of the Act the only scope for objection is whether the scheme is efficient and adequate and not whether exclusion is complete or partial. Objections are confined only to the four grounds of efficiency, adequacy, economy and proper coordination of road transport service. Exclusion can be attacked only on these four grounds." 47. In Smt. Sarswati Devi and Ors Vs. State of U.P.and ors, , while dealing with the scheme under the 1939 Act, their Lordships have held that while considering objections to scheme though a comparison between the STU and private operators for the purpose of finding out which of them should be preferred on the basis of their past performances is excluded, a comparison between the services envisaged by the scheme and preexisting services for the purpose of determining whether the scheme as framed provides for the operation of a service which would be efficient, adequate, economical and properly coordinated is not irrelevant. Their Lordship have further held that challenge to the scheme on the ground that it harms an existing operator is not permissible being an objection of a personal nature; however, objections which indicate the details of the services afforded by an existing operator so as to make a comparative study with the service envisaged by the proposed scheme would be admissible. 48. The hearing contemplated by Section 100(2) is not a matter of mere formality. The State Govt may have formed its own opinion on the necessity in the public interest for achieving the four-pronged purpose contemplated by Section 99 but that is not final. The legislature has chosen to provide the process for re-testing the correctness of the opinion so formed and that process consists of inviting the objections and affording an opportunity of hearing thereon before forming the final opinion. The geographical extent of the scheme (i.e. the routes which would be covered by the scheme) falls within the domain of policy decision which may not be capable of being judicially reviewed by the Courts but there are other aspects which fall within the scope of judicial review jurisdiction. The efficiency and adequacy aspects are to be kept in view for the purpose of deciding whether a complete or partial

nationalisation of routes would do. At the cost of repetition, we may clarify that the judicial review is not concerned with policy aspect of exclusion whether it should be complete or partial but it is certainly concerned with the factors of efficiency and adequacy. All the four legs on which stands the superstructure of purpose are open to judicial review on the well settled principles governing the judicial review jurisdiction of the courts. The courts would not substitute their own opinion for the opinion of the State Government but they would certainly examine whether the objections were invited, whether an opportunity of hearing was given and whether the decision was taken based on the relevant considerations, excluding the irrelevant ones. So much statement of law by way of prologue. 49. In order to correctly appreciate the contentions of the petitioners raised by reference to Section 100(2) of the Act and Chapter VI of Delhi Motor Vehicles Rules, 1993, it will be appropriate to take a bird's eye view of the events commencing from the initiation of the proposal and leading upto the approval of the scheme. 50. A cabinet note was put up on 9.5.97 'on revised approach to privatisation of city bus services' whereon the cabinet decision No. 246 dated 16.5.1997 was taken. On 18.8.1997, the Secretary STA proposed a draft publication which was approved by the Commissioner /Secretary (Transport) on 20.8.1997. The Minister for Transport and the Chief Minister approved the same respectively on 20.8.1997 and 21.8.1997. The Lt Governor approved the same on 11.9.1997 whereafter the proposal was publicly notified. 51. The factum of publication of the proposal regarding the scheme as contemplated by sub-section (1) of Section 100 is not a matter of controversy. As pointed out on behalf of the respondents, in all 1916 objections were received. Objections were almost verbatim the same. Notices were issued to all the objectors irrespective of the fact whether they had asked for the hearing or not but only 512 objectors made appearance for being heard. 52. The Commissioner-cum-Secretary (Transport) who is ex-officio Chairperson STA authorised the following three persons to hear the objections and record the substance of the objections for decision of the Government. These three are :- 1. Shri Rajesh Kumar, Dy Dir (Vig)/DCM ISBT. 2. Shri S.K. Khosla, OSD(STA) 3. Shri Ajijuddin Ahmed, OSD (STA) 53. The objections were then received. These three officers heard the objections on several dates. They then prepared detailed notes of the submissions made before them. These notes are dated 19.1.1998 and 22.1.1998. The notes accompanied by all the written representations/ objections received were put up before the Commissioner-cum-Secretary (Transport) who prepared her own note and then there were series of discussions held between the Minister and the Secretary. On 26.1.1998, the Commissioner-cum- Secretary (Transport) put up a note which takes care of the gist of objections and also her suggestion for the proposal being approved without modification for final publication. The Minister for Transport agreed therewith. The cabinet had a discussion thereon. The Commissioner-cum-Secretary (Tpt) prepared a fresh note as desired by the Minister on 31.3.1998. It was approved by the Minister, the Chief Minister and the Lt Governor on the same day. 54. It appears that about three objectors, including Om Parkash Pahwa, the petitioner in CWP 3000/98 raised a plea that they were not afforded a full opportunity of hearing. The official deputed

for hearing, it appears heard such three objectors for sometime. However, in our opinion, that does not make any difference. In view of the detailed hearing which had already taken place and looking at the similarity of objections it would not really make any difference if the said three objectors were not heard as claimed by them. 55. In the above said background, now we may note the grievances of the petitioners. What Mr Mukul Rohtagi, learned Senior advocate has submitted may briefly be stated. According to him Sections 99 and 100 of the Act use the expression 'State Govt' for the one which can frame a proposal and which has to receive, hear and decide the objections. Section 2(41) defines the State Govt in relation to a Union Territory to mean an administrator thereof appointed under Article 239 of the Constitution. Under Section 41 of the Govt of NCT of Delhi Act, 1991, the Lt Governor shall act in his discretion in a matter which he is required by or under any law to act in his discretion or to exercise any judicial or quasi- judicial functions. The function of hearing and deciding objections under Section 100(2) of the Act is quasi-judicial in nature and therefore, it must be discharged by the Lt Governor himself. Inasmuch as, neither the hearing was given by the Lt Governor, nor a decision was taken by him, the process has been vitiated. 56. The objections in this regard, vitiating the hearing in the submissions of the learned counsel for the petitioners, are:- (i) that the hearing contemplated by Section 100(2) is a function to be performed by the 'State Govt' which could not have been delegated, (ii) that on the own showing of the respondent, the hearing was by some one else while the decision was by some one else, snapping the link between the hearing and the decision; (iii) that the proposal should have been published in form PSU(A) in accordance with Rule 89 of Delhi Motor Vehicles Rules, 1992. Rule 91 contemplates an advance notice of hearing of not less than 14 days duration to the objectors. These provisions were not complied with; (iv) that some of the objectors especially Om Parkash Pahwa in CWP 3000/98 was not afforded adequate opportunity of hearing. 57. In reply, Mr Vaidyanathan, the learned ASG, submitted on behalf of the respondents that the plea of the petitioner has to be decided in the light of Article 239AA of the Constitution which Article was inserted by the 69th Amendment w.e.f. 1.2.92. The law relating to motor vehicles is covered by Entry 35 of the Concurrent List. The Lt Governor while exercising his functions will be governed by the aid and advice tendered to him by the Council of Ministers. Reliance was also placed on Section 44 of the Govt of NCT of Delhi Act, 1991, Article 163 of the Constitution, as also on the Rules of Business. 58. Heavily relying on G.Nageswara Rao Vs. APSRT, , Mr Rohtagi submitted that the process of hearing was vitiated by two more flaws :- (i) The Transport Commissioner-cum-Secretary was involved in framing of the proposal under Section 99 and was also associated with disposal of the objections while advising the Transport Minister which has excluded the fairness of the 'decision making process' and biased the views of the decision making authority ; (ii) The decision making authority, i.e. the Lt Governor having himself not heard the objections, the hearing has been no hearing in the eye of law. 59. Objection No. (iv) referred to in para 56 need not detain us as we have already dealt with the same in para (54) above. Om Parkash Pahwa and two others had remained

absent on some of the dates of hearing. In a case of this nature the officer hearing the objections was not bound to adjourn the hearings. Moreover, they had nothing now to offer over and above what their co-objectors had already submitted. The plea that some one was left out of hearing or was not heard is rejected. 60. The answer to the other pleas raised lies in finding out the nature of power exercised and functions discharged by the State Govt under sections 99 and 100 of the Motor Vehicles Act,1988 and finding out what is the concept of the State Govt. the expression as used in the above said two provisions. 61. As already noticed, the preparation and publication of proposal regarding road transport service of a STU under Section 99 of the Act has to be preceded by the formation of opinion by the 'State Govt'. The approval or modification of such proposal under Section 100 of the Act has to be preceded by inviting objections, affording the objectors an opportunity of hearing and consideration of the objections again by the 'State Govt'. The 'State Govt' is defined in relation to the Union Territory to mean the Administrator thereof appointed under Article 239 of the Constitution. 62. Article 239AA was inserted in the Constitution by the 69th Amendment w.e.f. 1.2.1992. With effect from that day Delhi which used to be a Union Territory governed by Article 239 of the Act, was assigned a special status. Vide clause (1) the Administrator of the Union Territory of Delhi called the National Capital Territory of Delhi appointed under Article 239 shall be designated as the Lt Governor. Under Clause (2) there shall be a Legislative Assembly for the National Capital Territory. The matters relating to seats therein and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by the Parliament. Under Clause (3) Legislative Assembly is empowered to make laws for the whole or any part of the NCT with reference to any of the matters enumerated in the State List or in the Concurrent List subject to a few exceptions which are not relevant for our purpose. Clause (4) of Article 239AA is of significance for the present case and is extracted and reproduced hereunder : (4) There shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lt Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to Act in his discretion: Provided that in the case of difference of opinion between the Lt Governor and his Ministers on any matter, the Lt Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lt Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary." (underlining by us) 63. The Govt of NCT of Delhi Act, 1991 (Act No.1 of 1992) was enacted by the Parliament and came into force on 1.2.1992. Sections 41 and 44 (to the extent relevant for our purpose) read as under : 41. Matters in which Lt Governor to act in his discretion .- (1) The Lt Governor shall act in his discretion in a matter_ (i) which falls outside the purview of the powers conferred on the legislative Assembly but in respect of

which powers or functions are entrusted or delegated to him by the President; or (ii) in which he is required by or under any law to act in his discretion or to exercise any judicial or quasi-judicial functions.. (2) If any question arises as to whether any matter is or is not a matter as respects which the Lt Governor is by or under any law required to act in his discretion, the decision of the Lt Governor thereon shall be final. (3) If any question arises as to whether any matter as respects which the Lt Governor is required by any law to exercise any judicial or quasi judicial functions, the decision of the Lt Governor thereon shall be final. 44. Conduct of business.-(1) The President shall make rules_ (a) for the allocation of business to the Ministers in so far as it is business with respect to which the Lt Governor is required to act on the aid and advice of his Council of Ministers; and (b) for the more convenient transaction of business with the Ministers, including the procedure to be adopted in the case of a difference of opinion between the Lt Governor and the Council of Ministers or a Minister. xxx xxx xxx 64. In exercise of power conferred by Section 44 of Government of National Capital Territory of Delhi Act, the President has framed Allocation of Business Rules, 1993, which were published in the Official Gazette on 1.12.1993 and came into force on that very day. Rule 3 provides for the Lt Governor in consultation with the Chief Minister allocating to the Ministers so much of business of the Government of NCT of Delhi as relates to the matters with respect to the Council of Ministers is required under Article 239AA to aid and advise the Lt Governor in the exercise of his functions and for that purpose assign one or more department to the charge of a Minister. Under Rule 4, Secretary for each Department shall be the official head of that Department. 65. To examine the scope and impact of Article 239AA, we would borrow the several principles of law laid down in Shamsher Singh Vs. State of Punjab, , a decision of a Constitution Bench of the Supreme Court which contains an illuminating exposition of the Constitutional scheme and impact on the working of the Government under the pari materia provisions such as Articles 53, 77, 154 and 166 of the Constitution. Shamser Singh's case was decided when Art 239AA was not to be found in the Constitution. 66. Under the parliamentary or cabinet system of Government as embodied in our Constitution, the President is the constitutional or formal head of the Union and he exercises his powers and functions conferred on him by or under the constitution at the aid and advice of his council of ministers. The Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his council of ministers save in the spheres where the Governor is required by or under the constitution to exercise his functions in his discretion. A comparative reading of Article 74 and 163 of the Constitution shows that in the matter of exercise of such functions which are 'in his discretion by or under the Constitution' the Governor is not made to depend on the aid and advice of the council of ministers under Article 163. The Constitution has not chosen to provide for similar discretionary functions to be discharged by the President under Article 74. The words " in his discretion" are used in relation to some powers of the Governor and not in the case of the President. 67. The phraseology employed by Clause

(4) of Article 239AA deserves to be compared with that employed in Article 163. The Lt Governor of NCT of Delhi would be aided and advised by the Council of Ministers in the exercise of his functions in relation to the matters with reference to which the legislative assembly has power to make laws. However, the Governor while exercising such powers and discharging such functions which 'any law' requires to be done 'in his discretion' are not associated with the aid and advice of the council of ministers. There the Lt Governor acts in his discretion. 68. To put it briefly what the Governor of a State may do at his discretion must be so provided for by the Constitution. What the Lt Governor of NCT of Delhi may do at his discretion may be provided by or under 'any law' and not the Constitution merely. 69. Articles 300 and 361 indicate that neither the President, nor the Governor,can be sued for executive action of the Government. None exercises the executive functions individually or personally. The executive actions taken in the name of the President or of the Governor are respectively the actions of the Union or the State. 70. There are several constitutional functions, powers and duties of the Governor which are conferred on him eo nomine the Governor. The Governor is by or under the Constitution required to act in his discretion in several matters. These constitutional functions and powers of the Governor eo nomine as well as those in the discretion of the Governor are not executive powers of the State within the meaning of Article 154 read with Article 162. (See- Shamsher Singh (supra),pr 9). The Governor under Article 163 can take up the view of the Council of Ministers exercising executive power of the State. He can exercise powers and functions without the aid and advice of the Council of Ministers when he is required to exercise his constitutional functions conferred on him eo nomine the Governor. The same principle applies to the Lt Governor of NCT of Delhi. He may so exercise his powers and functions which are conferred on him eo nomine,and also when he is required to act 'in his discretion' by or under'any law'. 71. The President or the Governor exercising his function conferred on him by or under the Constitution with the aid and advice of his Council of Ministers does so by making rules for convenient transaction of the business of the Govt of India or the Govt of the State respectively. They exercise their executive power directly or through the officer subordinate. Article 74 and 163 are the sources of rules of business. These provisions are for the discharge of the executive powers and functions of the Govt in the name of the President or the Governor. Where the functions of the Minister are performed by an official employed in the Minister's Department, there is in law no delegation because constitutionally the act or the decision of the officials is the act or decision of the Minister. The official is merely a machinery for the discharge of the functions entrusted to work with the Minister. The Minister must accept the responsibility for every executive act. 72. The executive power is generally the residue which does not fall within the legislative or judicial power. Executive power may also partake of legislative or judicial action. The business of the Government includes all executive business but cannot include quasi-judicial functions or the functions provided to be discharged by Governor, Lt Governor eo nomine or any other authority. 73. In every administration, decisions are taken by the civil servants. The Minister

lays down the policies. The Council of Ministers settle the major policies. When a Civil Servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Govt and not as its delegate. Where functions are entrusted to a Minister and these are performed by an official employed in the Ministry's department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. (Shamsher Singh's case, supra,para 35) 74. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or the Governor but the satisfaction of the President or the Governor in the Constitutional sense. In the cabinet system of Government, that is the satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two Articles namely 77(3) or 166(3) is the decision of the President or the Governor respectively. These articles do not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor." (Shamsher Singh's case,(supra-para 48) 75. In the matters in which the Governor acts 'in his discretion', though not obliged to seek advice of his counsel of Ministers yet would act in harmony with his council of ministers. Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers. 76. In all matters which vest in the executive, whether those functions are executive or legislative in character, the President or the Governor acts on the aid and advice of the council of ministers. Neither the President nor the Governor exercises the executive function personally excepting when the Constitutional scheme itself dictates to the contrary such as Articles 356 and 163(2) of the Constitution. 77. The power to prepare and publish a proposal regarding road transport service of a STU within the meaning of Section 99 is done in exercise of the executive power of the State. Under Section 99 read with Section 2(41), the Lt Governor while formulating the proposal would act on the aid and advice of the council of ministers. It is a policy decision to be taken in public interest as contemplated by Section 99. Section 99 is not a provision which requires the Governor to act in his discretion. 78. Receiving, considering and deciding the objections under Section 100 is not a power referable to the executive power of the State. Under Section 100 read with Section 2(41) of the Act, the Parliament has conferred a power on the Lt Governor and requires the Lt Governor to act 'in his discretion'. The nature of the function is quasi-judicial. Here Section 41 of the Govt of NCT of Delhi Act, 1991, is attracted, whereunder the Lt Governor has to act 'in his discretion', the exercise being quasi judicial. In G. Nageshwara Rao (supra), the exercise of the power conferred on the State Govt under section 68D of the Motor Vehicle Act, 1939 was held to be 'judicial' in nature. It was because under the scheme of the then legislation there was a dispute between the two parties i.e. the objectors and the STU-pitted like adversaries in litigation, and the State Govt was obliged to decide the dispute after giving a personal hearing

and following the rules of judicial procedure. Under Section 99 of the Motor Vehicles Act, 1988 there are no adversaries. The Lt Governor prepares and publishes the proposal under Section 99 read with Section 100(1) and receives, hears and decides the objections under Section 100(2). So the authority proposing the scheme and deciding the objections is the same but the character of the two functions differs. The Lt Governor though head of the State is an executive head of the State exercising the executive power of the State under Section 99 but is merely an administrative authority acting at 'his own discretion' under Section 100. Inasmuch as the principles of natural justice must be complied with the nature of the power exercised by the Lt Governor under section 100 becomes quasi-judicial. The procedure for receiving and considering the objections not provided by the statute itself can be devised. 79. The exercise of power by the President or the Governor can be delegated in the following cases (i) when authorised by the Constitution or any Statute; (ii) when the power is not vested as a trust or is not intended to be exercised by him personally and the delegation is not prohibited. Delegation cannot be so made as to efface the office of President or Governor itself. A delegate may not further delegate. Every discretion vested in the holler of a public office must be exercised to the best of judgment. 80. The pleasure of the President or the Governor is also capable of being exercised by such officers to whom it may be delegated (See Shamsher Singh's case, supra - para 53). 81. In James Edward Jeffs vs New Zealand Dairy Production and Marketing Board, 1967 AC,551, the Privy Council has held that the Board could regulate its procedure as it thought fit e.g. by hearing the interested parties orally or by receiving written statement from them or by appointing a person to hear and receive evidence or submissions from interested parties for its own information, in determining zoning question affecting the rights of the individuals. 82. In Indore Textiles Ltd Vs. Union of India, AIR 1983 MP 645, Justice G.P. Singh (Hon'ble the Chief Justice, as his Lordship then was) has so spoken for the Division Bench- " when a quasi-judicial power is conferred on the Government or a Minister, by a Statute, it is presumed that Parliament intends the power to be exercised in accordance with the principles of natural justice according to the usual practices of the department concerned. The normal practice of Government departments is that the Minister in charge of the Department taking assistance from subordinate officials of his department. There is no breach of natural justice if the investigation of the hearing part is done by an official or a committee and the final decision is taken by the Minister after going through the report of the officer concerned and the evidence and material collected by him. Even in acting upon such a report the Minister may take assistance from others in his department and the decision reached by him cannot be tested being in violation of the principles of natural justice if he has honestly applied his mind to the relevant material and the decision reached by him is really his decision. 83. In Prem Chand Jain vs. State of MP, 1965 MP 196, it was held "the business of State is a complicated one and must of necessity be conducted through officers subordinate to the Governor, including ministers. Therefore, the argument that the statutory power under section 68D(3) of the Motor Vehicles Act, 1939 which has been conferred on

the State Govt cannot be delegated at all is unsound if it implies that officers subordinate to the Governor cannot be authorised to exercise such powers. It is now well established that the business of the Government of a State includes its statutory and quasi judicial functions and that ministers or other subordinate officers may be authorised to discharge such functions in accordance with the rules of business made under Article 166(3) of the Constitution, though this would not amount to delegation in the sense of divestiture of responsibility. 84. In Raipur Transport Co Pvt Ltd Vs. State of MP, , the learned Chief Justice speaking for the DB held that the function of hearing objections to a scheme and of approving or modifying it is essentially an administrative function though the process of hearing is quasi judicial. 85. A scheme once approved is a law. Consequently the function involved in initiating and finalising the scheme is partly legislative, partly executive and partly judicial. An executive function also involving quasi legislative and quasi judicial functions can be delegated as part of the executive functions.(See- Sham Sher Singh's case, supra,pr 57) 86. The learned counsel for the petitioners forcefully submitted that 'one who hears must decide' is an essential postulate of natural justice. Hearing by one and decision by other is a divided responsibility which is destructive of the concept of judicial hearing. It was submitted that the authority which took the decision in the matter of approving the scheme should have heard the petitioners. In the case at hand the function of hearing was delegated to three officers, as noticed hereinabove which has resulted in destruction of the hearing. We cannot agree. It has to be borne in mind that the hearing contemplated by Section 100(2) of the Motor Vehicles Act is an institutional hearing given by the State Govt (i.e. the Lt. Governor in a Union Territory); it is not a hearing by an individual. There is nothing wrong if the power to receive the objections and hearing the same was delegated to the officers. One who hears, prepares detailed notes and places the same for consideration before the one who decides along with the entire material available on the record. The principles of natural justice cannot be said to have been violated. Reference may be had to Ossein & Gelatine Manufacturers Association of India Vs. Modi Almalies & Chemicals Ltd, , State of Maharashtra Vs. Smt Sushila Mafatlal, , wherein is quoted Kavita Vs. State of Mahrashtra observing that the Government business could never get through if the same individual has to act for the Government at every stage of proceedings or transaction, however, advantageous it may be. 87. However, we need not dwell further on the above said plea. It is not required. In the case at hand we have held that while hearing and deciding the objections under Section 100(3) of the Motor Vehicles Act, 1988, the Lt Governor was acting as an authority. He could have delegated the function of receiving and hearing the objections to an officer subordinate but this he never did. The three officers who heard the objections were not authorised to do so by the Lt Governor. The authorisation/delegation was by the Commissioner-cum-Secretary (Transport) who was neither acting on behalf of the Governor nor could have acted. A hearing by the officers who were not authorised to do so by the Lt Governor was no hearing in the eye of law and within the meaning of Section 100(2) of the Motor Vehicles Act. 88. We cannot resist observing on the material available

before us that on an issue of wide importance to the citizenry not only of Delhi but also consisting of people visiting the capital of the country decisions were taken superficially and without due application of mind by those concerned. In a city like Delhi, public transport is not a matter of mere convenience. It is a prime necessity. Delhi does not have local trains or tube rail service running through the length and breadth of the capital city. It is the road transport system which every dawn brings the city to life. The road transport services in Delhi enable earning the daily bread and butter of the common man. It connects the offices, industries and working places with the residential pockets. Failure of the road transport system would suffocate the heart throb of the capital. The formation of the scheme under Section 99 and its approval or modification under Section 100 must show the awareness on the part of those who are associated with the two processes, that is, proposing the scheme and approving it, that they have travelled the length and breadth of the issue before them, having collected all the relevant material and having given to it a serious thought intensively and extensively. We are unhesitatingly of the opinion that the decision making process adopted by the respondents falls utterly short of expectation inbuilt in Sections 99 and 100 of the Motor Vehicles Act. 89. It is true that the proposal under Section 99 and its approval under Section 100 may have the effect of eliminating private operators but that cannot be helped. The learned ASG has very rightly pointed out-every march of peace in the direction of prosperity has its own martyrs. Such martyrdom cannot be judicially recognised as of relevance for thwarting a change or scuttling a step taken in public interest. we cannot resist expressing that the State Government would have been better advised to take a clue from the expression employed by the legislature whereby it contemplates a proposal regarding road transport service within the meaning of Section 99, being so designed as to exclude completely or partially other persons or otherwise from operating. We do not find the mind having been applied at either stage to the question whether the DTC with its available means and history of performance as reflected by its own operational statistics would be capable of shouldering the heavy burden of road transport service needed in Delhi so as to serve the public interest by providing efficient, adequate, economical and properly coordinated road transport service. After due deliberations, subject to expert opinion, it should have thought of taking over a part of the city services either by reference to persons or otherwise and tested the DTC. The DTC should have demonstrated its capacity and capability to render the road transport services of the quality contemplated by Section 99. Having so justified its existence in the era of partial exclusion of private services-by reference to persons or routes or otherwise, then it should have in a phased manner proceeded towards a goal of achieving the complete exclusion. DELHI MOTOR VEHICLES RULES, 1993- Ch VI, plea based on ? 90. Chapter VI of Delhi Motor Vehicles Rules 1993 entitled_ 'Special Provisions Relating To State Transport Undertakings', incorporating Rules, 89 to 94, in the submission of the learned counsel for the petitioners lays down complete procedure relating to hearing on the proposal regarding a scheme. As per Rule 89 the proposal as to scheme has to be notified in the form PSU (A). Rule 91 provides the

objectors to be given a notice of not less than 14 days in advance of the time and place of the hearing. Both the provisions were breached . Neither there was a publication in the prescribed proforma nor a 14 days notice given to the objectors. 91. The learned ASG has submitted on behalf of the respondents that this Chapter was designed to meet the requirements of a scheme proposed by a STU and does not have applicability to a scheme proposed by the State Govt. We do not agree. The rules were framed in the year 1993 when the Motors Vehicles Act, 1988 had already come into operation. In fact, the rules have been framed in exercise of the powers conferred by the 1998 Act. The use of the expression 'the State Transport Undertaking' throughout Chapter VI of the Rules is inappropriate and appears to be the outcome of an inadvertant error committed by the rule making authority. The rules contained in Ch. VI are intended to meet the requirements of Section 99 and 100 of the new Act and it will be appropriate to interpret them by holding that the expression 'State Transport Undertaking' wherever it occurs in Chapter 6 means the 'State Govt'. and the rules should be so construed. The rule making authority would be better advised to carry out suitable amendment in Chapter VI so as to substitute the expression 'State Govt' for the 'State Transport Undertaking' wherever it occurs. However, still the submission of the learned counsel for the petitioners would not make any difference on the merits of the petitions. Publication of the proposal as to scheme in form PSU(A) and issuance of 14 days notice are both directory provisions and in the absence of prejudice BY the non-compliance thereof would not vitiate the proceedings; Moreso WHEN the provisions have been substantially complied with. A departure from the Rules not technical merely but substantially in nature is needed to vitiate the purity of the process contemplated by Section 100 of the Act. Plea of ex-serviceman operators- Promissory Estoppel? 92. We may briefly deal with the plea raised in CWP 3019 and 3020/98 which are by Ex-Servicemen. In the absence of requisite material brought on record disputing the claim made by Ex-Servicemen we have no reason to doubt the correctness of their assertion of having rendered the yeomen's service to the commuters of Delhi. Being ex-servicemen they are likely to be disciplined not only as a person but also in their performance in the field of transport operation. They could have been tolerated as such, as supplemental to the DTC services. But that is a factor to be taken into consideration by the by policy makers. We are on law. Their principal plea is one of promissory estoppel. The other plea is that the proposal adversely speaks of performance of red lines and blue line operators but does not take into consideration either the data relevant to the performance of the ex-servicemen and unemployed graduate bus operators, nor of their interest. In our opinion, the plea of promissory estoppel is not available in the least in the facts and circumstances of the case. To found a plea of promissory estoppel there must be a promise held out and promisehaving altered his position to his disadvantage acting on such representation. There is no promise held out by the State to the ex-servicemen and unemployed graduates that they shall never in future be eliminated from road transport operation. At any particular point of time in the past, guided by the consideration of devising some scheme for the welfare of the ex-servicemen and

the unemployed graduate if the State chose to give them a preferential order or special treatment in the matter of allotment of permits by treating them as a class by themselves that would not mean that the privilege so conferred would be a life time privilege incapable of being withdrawn at any point of time in future. Promissory estoppel cannot be pleaded in face of a change of policy decision or a statute. A proposal ripening into a scheme under Sections 99 and 100 of the Motor Vehicles Act, 1988 is statutory. Once a valid scheme comes into operation, those who are excluded become a matter of past and must yield to the State Transport Undertaking. 93. No material has been brought on record enabling formation of an opinion regarding such ex-servicemen or graduates having altered their position to their disadvantage acting on the welfare scheme promulgated for their sake. 94. Both the pleas referred to in para 6 above must, therefore, fail. 95. To sum up, we are of the opinion that neither the proposal as to scheme made under Section 99 nor the disposal of objections under Section 100 take care of the most vital requirements of the scheme without which it is a nullity. 96. A few questions have remained unanswered. 96.1 The fact that the private operators will be eliminated from stage carriage operation in Delhi is of no relevance but has there been a comparative study of the performance of the existing private operators and the performance which the DTC would be able to provide in the light of the factors of adequacy, efficiency, economy and co-ordination? 96.2 Has the militancy of the DTC staff Union come to an end? Has the DTC stopped accumulating losses? Does the DTC have funds, means or resources to stop its depleting bus strength? Have all those factors in-built in the DTC operation which had led to the growing public criticism of DTC ceased to exist? In short, have the considerations which were relevant and weighty in the year 1992 leading to switching over to privatisation of bus services, all ceased to exist? 96.3 Are the several factors which tell against the privatisation of city transport services not applicable to DTC operation also? 96.4 The same drivers which were thought to be responsible for road accidents and disorderly/indisciplined behaviour on Delhi roads would become disciplined and worthy of reliance merely because the same buses would run on the roads not on their own permits, but under the kilometres schemes and permits held by the DTC? 97. Without a serious application of mind to issues of vital significance, we do not think that the four pronged purpose of 'necessary in public interest' based on foundation stones of efficiency, adequacy, economy and proper co-ordination can be achieved by the Scheme. Permitting the impugned scheme to hold the ground would amount to joyful gaming with the public interest. About six years before, switching over to privatisation was considered in public interest. Today the State Government is switching back to DTC operation. If the experiment fails they would have no option, but to switch over once again back to square one. A step up and a step down, time and again, cannot be ruled out in the process of policy making, for one gets wiser by learning the lessons. However, all this cannot be tolerated at the cost of public interest. The material available on record and extensively set out in the body of the judgment suggests the wavering State Govt time and again shifting from dragon to devil and devil to dragon and none can meet the eye of Section 99. The Scheme suffers from

the sin of nonapplication of mind to the issue of singular significance-whether it would successfully achieve the purpose of providing an efficient, adequate, economical and properly coordinated road transport service. It would not on the material available we are satisfied to hold, though we cannot (and therefore do not) substitute our own opinion for that of the State Govt. Add to this (i) the failure of the KM Scheme without which the Scheme ceases to be workable, and (ii) non-compliance with Section 100(2) of the Act- the objections having been heard and decided neither by the Lt Governor nor by an officer authorised by him in this behalf. The sin must take its toll. The Scheme as proposed and as approved -both must go. 98. We are conscious that quashing of the Scheme would result into reverting back to private operators partially - the dreaded blue line and red line operators, as they are called. Public safety is supreme. The Supreme Court has from time to time issued several directions in Writ Petition (C) No.13029/1985 (M.C.Mehta Vs. Union of India). We need only remind the authorities of the State of the need to follow in letter and spirit the directions so made, which are the law of the land. A rigorous and ruthless implemtation of the directions would take care of the public interest if only the State Govt.has a will to do so. 99. By way of abundant caution, we make it clear that the quashing of the Scheme does not take away the jurisdiction of the respondents to frame a scheme afresh and approve and implement the same, but only on satisfying the requirements of Sections 99 and 100 of the Act consistently with the observations made hereinabove. 100. For the foregoing reasons, the petitions are allowed, the impugned public notifications dated 22.9.97 under Section 99 and dated 15.6.98 under Section 100 of the Motor Vehicles Act, 1988 are hereby quashed. No order as to the costs.