T. Govindaraja Mudaliar Etc. Etc vs The State Of Tamil Nadu & Others on 9 January, 1973

Equivalent citations: 1973 AIR 974, 1973 SCR (3) 222, AIR 1973 SUPREME COURT 974, 1973 (1) SCC 336 1973 3 SCR 222, 1973 3 SCR 222, 1973 3 SCR 222 1973 (1) SCC 336, 1973 (1) SCC 336

Author: A.N. Grover

Bench: A.N. Grover

PETITIONER:
T. GOVINDARAJA MUDALIAR ETC. ETC.

Vs.

RESPONDENT:
THE STATE OF TAMIL NADU & OTHERS

DATE OF JUDGMENT09/01/1973

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
MUKHERJEA, B.K.

CITATION:
1973 AIR 974 1973 SCR (3) 222
1973 SCC (1) 336
CITATOR INFO :
RF 1988 SC 501 (5)
R 1988 SC1353 (18)
R 1989 SC2105 (6)
RF 1990 SC1277 (5)

ACT:
Constitution of India, Article 19(1)(f)-Motor Vehicle Act 1939, Madras Amendment Act 18 of 1939-Chapter IVA-Sections 47(1)(cc), 58(2)(a), Section 68(cc)-Rules of Business-Rule 23(A)-Scheme for nationalisation of State Carriage whether violative of Article 19 (1) (f).
Constructive res judicata-The same scheme unsuccesfully challenged for violation of Art. 19 (1) (g) earlier.

HEADNOTE:

The Scheme for nationalisation of the Stage Carriage issued under Chapter IVA of the Act was challenged before Supreme Court on the ground of the alleged violation of Art. 19.(1)(g) of the Constitution. The Supreme Court by its judgement in A. Samjeevi Naidu etc. V. State of Madras and another (1970 3 S.C.R. 505) turned down the challenge. After the decision of the Supreme Court in Rustom Cavasjee Cooper v. Union of India (1970 3 S.C.R. 530), the said scheme was again challenged as violative of Art. 19 (1) (f) of the Constitution. The Scheme was challenged inter alia, on the ground, that the permit issued under the Act constitutes property, and the right to apply for permit as 'well as renewal of a permit is a right to hold property and that the law authorising the nationalisation of Stage Carriage was violative of Art. 19(1)(f) as the restriction was not in the public interest. The writ petitions were dismissed by the Madras High Court. In rejecting the appeals.

HELD : (i) That there is no merit in the argument of the appellants that before the decision of the Supreme Court in Rustom Cavasjee Cooper's Case, it was not possible for the appellants to challenge the validity of Chapter IVA of the Act, as the earlier decisions were based on an theory that Art. 19 (1) (f) could not be invoked when a case fell within Art. 31 of the Constitution K. K. Kochuni and Others V. State of Madras (1963) 3 S.C.R. 887), had earlier laid down that clause 1 of Art. 31 could no longer be construed as to exclude the operation of Art. 19 and a law regarding the deprivation of property was, therefore, too late in the day to pursue that line of argument. [229 D]

(ii) By Virtue of the Scheme, the existing permits of any operator will not be cancelled. None of the properties or assets of the appellants is going to be acquired. It has already been held that no operator can claim renewal of permit as a matter of right. The effect of nationalisation on the properties or the business of the operator is not such as cannot be regarded to a reasonable restriction in the interest of general public within the meaning of Art. 19(5). The tests regarding the validity of Act falling under Clause 5 or Clause 6 of Article 19 are same, Akadshi Padhan v. State of Orissa (1963) Supp. 2 S.C.R.. 691) followed. [232 H]

(iii) Held, the hearing of objections to the Scheme under s. 68 (b) of the Act by the Home Secretary does not violate rules of natural justice nor can any bias be imputed simply because Home Secretary is also

223

the member of a committee which made the report regarding the Schemes of nationalisation. Dosa Satyanarayana Murthy v. The Andhra Pradesh State Road Transport Corporation (1961 S. C. R. 642) followed. [233 G]

(iv) Held further, that the nationalisation Scheme, even if introduced piece-meal on particular routes, is not illegal

unless it is established that there is discrimination against some operators.
Dosa Satyanarayana Murthy's case followed.
The mere fact that the Scheme was approved by the Home Secretary without any modification does not mean that the discretion, in discharge of the quasi-judicial function under s. 68(b) was not properly exercised or that there was no scope for the proper exercise of the discretion due to the mandatory language contained in Govt. Orders. [235 E]
Saghir Ahmed v. State of U.P. & Ors., [1955] 1 S.C.R. 707, Ram Chandra Palai and Others v. The State of Orissa & Ors. [1956] S.C.R. 29, Bhikaji Narain Dhakras and Others v. The State of Madhya Pradesh and Others, [1955] 2 S.C.R. 589, Gullapalli Nageswara Rao and Others v. Andhra Pradesh State Transport Corporation and another [1959] Supp. 1 S.C.R. 319, Smt. Sitabati Debi and another v. State of West Bengal and another, [1967] 2 S.C.R. 949, Mohd. Ayub Khan v. Commissioner of Police, Madras and another, [1965] 2 S.C.R. 884 Smt. Somavanti and Others. The State of Punjab and Others [1963] 2 S.C.R. 774, Municipal Committee, Amritsar and another v. State of Punjab and Others [1969] 3 S.C.R. 447 referred to.
East India Electric Supply & Traction Co. Ltd. v. S. C. Dutta Gupta and Others, 59 C.W.N. 162, held not applicable.
Srinivasa Reddy and Others v. The State of Mysore and Others [1969] 2 S.C.R. 130, explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 672702, 704-710, 722-728, 776-781 of 1972 & 1057-1062, 1120, 1125, 1200, 1224, 1298-1300 & 2301 of 1972.

Appeals by certificate from the Judgment and Order dated February 3, 1972 of the Madras High Court in Writ Petitions Nos. 883, 884, 885, 886, 942, 992, 993, 994, 995 of 1966, 2061, 2649, 3825 of 1970.

A. K. Sen. K. Jayaram, for the appellants, in C.A. No.

672. K. Jayaram for the appellants in C.As. Nos. 673-676, 683, 684, 687, 688, 693, 678, 681, 682, 685, 686, 689-698, 694- 695, 776-781, 1298-1300 & 2301.

M. Natesan, K. Jayaram, for the appellants in C.A. No.

677. K. K. Venugopal and Vineet Kumar for the appellants in C.A. Nos. 697-702.

E. C. Aggarwala, and A. T. M. Sampath for the appellants in C.As. Nos. 704.710.

K.K. Venugopal and K. B. Nambiyar, for the appellants in C.As. Nos. 722-728, 1057.1062 & 1200.

K. K. Venugopal and A. S. Nambiyar for the appellants in C.As. Nos. 1120.1125.

Vineet Kumar for the appellant in C.A. No. 1224. S. Govind Swaiminadhan, S. Mohan, A. V. Aangam and A. Subhashini for the Respondents in C.As. Nos. 672-676, 678 for Respondents Nos. 1, 3 & 4 (In C.As. Nos. 677, 679, 680, 697, 702. 704-710, 722-728 and 776-781.

S. Gobind Swaminadhan, A. V. Rangam, N. S. Sivam and A. Subhashini for the respondents in C.As. Nos. 1057, 1062, 11201125, 1200 and 2301 and all the respondents in C.A. Nos. 1224 and 1298-1300.

The Judgment of the Court was delivered by-

GROVER. J. These appeals by certificate arise out of a common judgment of the Madras High Court given in a number of writ petitions filed before it by various stage carriage operators.

The facts have been set out in detail in the judgment of the High Court and need be stated only briefly. The policy of nationalisation of passenger bus Transport in the State of Madras (now Tamil Nadu) was laid down by the Government Order dated June 7. 1967. Under that order all routes of 75 miles and above, all routes radiating or terminating in Madras City and all routes in the Kanvakungi District were to be nationalised as and when the permits of the private operators expired. By the Government order dated June 17, 1967 a committee was constituted for implementing the, above, decision. A Draft scheme was prepared by the committee for nationalising the routes in question to the complete elimination of private operators. This scheme was published under s. 68-C of the Motor Vehicle Act 1939, hereinafter called the 'Act'. A number of writ petitions were filed in the High Court in 1967 challenging the validity of the draft scheme. That scheme was struck down by the High Court. Thereafter the Governor of Madras inserted Rule 23-A in the Madras Government Business Rules in Exercise of his powers under Art. 166 of the Con- stitution. It was provided thereby that the powers and functions which the State Transport Undertaking could exercise under s. 68C shall be exercised by the Secretary to the Government of Madras in the Industries, Labour and Housing Department on behalf of the State Government. It was also provided by that Rule that the powers and functions of the State Government under s. 68-D of the Act and the Rules relating thereto were to be exercised by the Secretary to the Government of Madras in the Home Department on behalf of the State Government. In April 1968 an Ordinance was promulgated by the Governor which was later replaced by the, Madras Act 18 of 1968 which became effective from April 1, 1968. By that enactment s. 47(1) CC, s. 58(2) (A) and s. 68 (CC) were added to the Act. Under the first two sections the Regional Transport Authority was to have due regard to the publication of the draft scheme in granting a permit or a renewal of a permit. The State Transport Undertaking, however, was entitled as of right to the issuance of a temporary permit on the publication of a draft scheme under s. 68(CC). In exercise of the powers and functions under the new Business Rule 23-A schemes of nationalisation were promulgated and published. A number of operators again filed writ petitions challenging the draft scheme as also the validity of the Tamil Nadu Act 18 of 1968. The High Court upheld the validity of these provisions including the newly added sections. That decision was affirmed by this Court in A. Sanjeevi Naidu etc. etc. v. State of Madras & Another. (1) It was pointed

out in that judgment that in the State of Tamil Nadu the State Transport Undertaking is a Department of the State Government. Therefore the necessary opinion had to be formed by that Government. It was held that the function under the Act had been allocated by the Governor to the Transport Minister under the Rules and the Secretary of that Ministry had been validly authorised under rule 23-A to take action under s. 68 (c) of the Act. The validity of the provisions of the Madras Act 18 of 1968 which amended the Act had been canvassed before this Court but it was observed that it was not necessary to decide that matter while deciding the question of the validity of the impugned scheme.

As pointed out by the High Court a third attempt was made by way of filing writ petitions in the High Court out of which the present appeals have arisen to impugn the validity of Chapter IV A of the Act as amended by Madras Act 18 of 1968. We shall first state the allegations which are relevant for deciding the constitutionality of the impugned provisions. In this connection we may refer to writ petition No. 780 of 1970 in which the petitioner V. Krishnamurthy was one of those who had challenged the validity of the draft scheme published by the Director, Madras State Trans port Department as well as the draft scheme published by the Secretary to the Government of Madras, Industries, Labour and Housing Department. It was stated in para 7 of the petition that (1) [1970] 3 S.C.R. 505.

16-631Sup. CI/73 by reason of the dismissal of the appeals by this Court the Secretary to the Government, Home Department, would now be competent to take up the draft scheme for hearing under S. 68-D of the Act. On finalisation of the scheme the petitioner's permit would automatically stand cancelled. In that event the petitioner's business would have to be closed down and he would be seriously affected financially. The following part of paragraph 7 may be reproduced :

> "It would be seen that the result of the implementation of the Chapter IV-A is that only two buses operated by me as a commercial undertaking could have been nationalised, and the vehicles covered by the permits would be reduced in value to that of scrap and it would have no market at all as there would be no operators who would be coming forward to purchase these vehicles by reason of the nationalisation policy of the Government."

According to paragraph 8 of the petition Chapter IV-A of the Act is violative of the fundamental rights guaranteed under Art. 19(1) (f) and (g) of the Constitution for the reason, inter alia, that the permit issued under the Act constitutes property and the right to apply for a permit as also to be granted a renewal of a permit is a right to hold property and the petitioner would be deprived thereof. The petitioner's right under Art. 19(1)(f) could, therefore, be taken away only by a law relating to nationalisation of stage carriages if such a law satisfied the test of Article 19(5), namely that it should be a reasonable restriction in public interest. It was stated that public interest would in no way be promoted by nationalisation because the Government undertaking wherever the routes had been nationalised was running into loss. Another attack was made on the ground that no procedural safeguards were contained in the Act before deprivation of the right to property could take place. It was further pleaded that although S. 68-D provided for compensation, being paid at the rate of Rs. 200/per month of the unexpired portion of each permit there was no provision for

compensation where as a result of the approved scheme renewal of the permit was refused. In the return which was filed on behalf of the respondents an objection was raised that the writ petition was liable to be dismissed on the ground of constructive res judicata. A writ petition had been filed on previous occasion and the points now sought to be agitated had not been taken. It was further maintained that according to the scheme it was only on the expiry of the existing permits,of operators that the State Transport Undertaking would commence its services under the scheme of nationalisation. Other allegations made were denied.

The High Court first considered the question whether Chapter IV-A of the Act is violative of Art. 19(1) (f) of the Constitution and the same has been canvassed before us strenuously. The High Court was of the view that a route permit is property and that although the validity of That Chapter had corn& up for consideration before this Court earlier and had been upheld but the decision in those cases was confined to the attack under clause (g) of Article 19 and not clause (f). Now was it open to challenge before the decision of this Court in what is known as the Bank Nationalisation case : Rustom Cavasjee Cooper v. Union of India.(1) The High Court acceded to the argument of the Advocate General that a bus with a permit is a valuable property but without a permit or when the permit expires it ceases to have more value than what can be fetched in the market. The motor vehicle is not taken away by the Government and the permit holder is free to use it. Since the renewal of a permit is not a matter of right on the expiry of the permit its holder had no property in it and as such there was no question of infringement of his funda- mental rights guaranteed by Article 19(1)(f) or Art. 31 of the Constitution.

It is necessary to notice the previous decisions in which the constitutional validity of the provisions similar to those of the Act was challenged. In Saghir Ahmed v. State of U.P. & Others (2) it was held that the U.P. Road Transport Act 1951 violated fundamental rights of private citizens guaranteed under Art. 1 9 (1) (f) of the Constitution and was not protected by clause (6) of Art. 19 as it stood at the time of the enactment. A declaration had 'been made in terms of s. 3 of that Act to the effect that the stage ,carriage services, among others, on the Bulandshahr Delhi route shall be run and operated exclusively by the State Government. A scheme was also notified for the operation of the stage carriage services on those routes. This was held to be an infraction of Art. 19(1) (g) of the Constitution. The new clause inserted in Art. 19(6) by the Constitution First Amendment Act 1951 did not apply to the facts of this case. It was observed that after the insertion of that clause no objection could be taken to the creation of a monopoly by the State on the ground that it violated Art. 19 In the next case Ram Chandra Pilai & Others v. The State of Orissa & Others (3) schemes of nationalisation of stage carriage services were assailed on various grounds including infringement of Art. 19(1) (f) and (g). In view of the amendment made in clause (6) the creation of a state monopoly by law was found to be permissible under that clause. Saghir Ahmads case was held to be inapplicable and the decision in Bhikaji Narain Dhakras (1) [1970] 3 S.C.R. 530. (3) [1956] S.C.R. 29. (2) [1955] 1 S.C.R. 707.

& Others v. The State of Madhya Pradesh & Another(1) was followed. It was not considered necessary to examine the further contention that the fundamental rights guaranteed under Arts. 19 (1) (f) and 31(2) had been violated. If the permits held under the Act were prematurely terminated or cancelled compensation was provided by the Orissa Act under which the nationalisation had been

done. If there was no renewal of the permits on their expiration after they had run for their normal period no claim could be made by the pen-nit holders on the score of such nonrenewal because renewal was not a matter of right. The concerned transport authority would be well within its right to refuse such renewal having regard to the provisions of the amended sections 47 and 55 of the Act. If at all there was any deprivation of proprietary rights it would be by authority of law. in Gullapalli Nageswara Rao & Others, v. Andhra Pradesh State Transport Corporation & Anr. (2) the validity of the 'provisions contained in Chapter IV-A of the Act was directly assailed. The Court refused to draw inferences from the provisions contained in s. 68-G for payment of compensation to the holder of a permit that the legislature had assumed that a transfer of the business was involved in the process laid down in Chapter IV-A. Article 31 of the Constitution was held not to having been attracted. Before the decision in K. K. Kochuni & Others v. State of Madras & Others(3) this Court had held in the State of Bombay v. Bhanji Munji & Another(4) which was followed in certain other cases that the substantive provisions of law relating to acquisition of property were not liable to be challenged on the ground that they imposed unreasonable restrictions on the right to hold property. In other words, in cases falling under Art. 31(2) the provisions of Art. 19(1) (g) could not be invoked. In Kochuni's case, however, the effect of the Constitution Fourth Amendment Act 1955 on Art. 31 was considered. It was held that that Article was no longer a self-contained Article providing for a subject different from that dealt with by Art. 19. It dealt with two different subjects. Clauses 2 and 2A dealt with acquisition and requisition and clause 1 with deprivation of property by authority of law. Clause 1 of Article 31 could no longer be so construed as to exclude the operation of Article 19. Bhanji Munji's case was distinguished on the ground that after the Constitution Fourth Amendment Act it no longer held the field. In Smt. Sitabati Debi & Anr. v. State of West Bengal & Anr.(5) it was pointed out that Kochuni's case was not concerned with a law of requisition or acquisition. Therefore the observations therein had to be under-

(1) [1955] 2. S.C.R. 589.

(3) [1960] 3 S.C.R. 887.

(2) [1959] Supp. S.C.R. 319.

(4) [1955] 1 S.C.R. 777.

(5) [1967] 2 S.C.R. 949.

stood as meaning that Bhanji Munji's case no longer governed a case of deprivation of property by means other than requisition and acquisition. In other words any deprivation of property under Art. 3 1 (1) had to satisfy the guarantee of the fundamental rights including Art. 19(1) (f). In Rustom Cavasjee Cooper's case however, this Court settled the whole position by holding that the limitation prescribed for ensuring due exercise of the authority of the State to deprive a person of his property and the power to compulsorily acquire the property were specific clauses of limitation on the right of private property falling under Art. 19 (1) (f).

Thus the Court came to the conclusion that Arts. 19 (1) (f) and 31(2) were not mutually exclusive. The argument of the appellants is that prior to the decision in Rustom Cavasjee Cooper's case it was not possible to challenge Chapter IV-A of the Act owing to the decision of this Court that Art. 19(1) (f) could not be invoked when a case fell within Art. 31 and that was the reason why this Court in all the previous decisions relating to the validity of Chapter IV-A proceeded on an examination of the argument whether there was infringement of Art. 19(1) (g), and clause (f) of that Article could not possibly be invoked. We are unable to hold that there is much substance in this argument. Bhanji Munji and other decisions which followed it were based mainly on an examination of the inter-relationship between Article 19(1) (f) and Art. 31(2). There is no question of any acquisition or requisition in Chapter IV-A of the Act. The relevant decision for the purpose of these cases was only the one given in Kochuni's case after which no doubt was left that the authority of law seeking to deprive a person of his property otherWise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental rights guaranteed by Art. 19 (1) (f). It was, therefore, open to those affected by the provisions of Chapter IV-A to have agitated before this Court the question which is being raised now based on the guarantee embodied in Art. 19(1) (f) which was never done. It is apparently too late in the day now to pursue this line of argument, in this connection we may refer to the observations of this Court in Mohd. Ayub Khan v. Commissioner of Police Madras & Another(1) according to which even if certain aspects of a question were not brought to the notice of the court it would decline to enter upon-re-examination of the question since the decision had been followed in other cases. In Smt. Somavanti & Others v. The State of Punjab & Others(2) a contention was raised that in none of the decisions the argument advanced in that case that a law may be protected from an attack under Art. 31 (2) but it would be still open to challenge under Art. 19(1) (f), had (1) [1965] 2 S.C.R. 884.

(2) [1963] 2 S.C.R. 774.

been examined or considered. Therefore, the decision of the Court was invited in the light of that argument. This contention, however, was repelled by the following observations at page 794 :-

> "The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was, actually decided."

It is common ground in the present cases that the validity of Chapter IV-A of the Act has been upheld on all previous occasions. Merely because the aspect now presented based on the guarantee contained in Art. 19 (1) (f) was not expressly considered for a decision given thereon will not take away the binding effect of those decisions on us., The learned Advocate General who appears for the respondents has invited our attention to certain decisions which do not relate to the provisions of the Act but in which the principle which is sought to be invoked on behalf of the appellants based on Art. 19(1)(f) has been examined. In Akadshi Padhan v. State of Orissa(1) the question was whether the monopoly in the trade of Kendu leaves which the State of Orissa took over constituted restriction on the fundamental right of the petitioner who used to carry on extensive trade in the sale of Kendu leaves. The attack against the Orissa Act by which the monopoly was created was based on the alleged contravention of the fundamental rights under Art. 19(1)(f) and (g). The rival contentions

which were advanced were that the effect of the change made by the Constitution First Amendment Act 1951 in Art. 19(6) was not to exempt the law passed for creating a State monopoly from the application of the rule prescribed by the first part of Art. 19(6). On the other hand it was contended by the State that the object of the amendment was to put the monopoly laws beyond the pale of challenge under Art. 19(1) (f) and

(g). The scope and effect of Art. 19 (6) after its amendment was fully considered. The Court felt no difficulty in rejecting the argument that the creation of a State monopoly must be justified by showing that the restrictions imposed by it were reasonable and were in the interest of the general public. It was stated emphatically that the amendment clearly indicated that the State monopoly in respect of any trade or business must be presumed to be reasonable and in the interest of general public so far as Art. 19(1) (g) was concerned. The Court proceeded to hold that the effect of the amendment made in Art., 19(6) was to protect the law relating to the creation of monopoly and that meant it were only these provisions of that law which were integrally and essentially connected with the creation of the monopoly which were protected The rest of the provisions which (1) [1963] Supp. 2 S.C.R. 691.

might be incidental did not fall, under the later part of Art. 19(6) and would inevitably have to satisfy the test of the first part of that Article. The question which is more relevant for our purpose was next considered, namely, the effect of the amendment, on the other fundamental rights guaranteed by Art. 19(1). The following observations at page 710 on this point may be reproduced :

> "The position, therefore, is that a law creating a State monopoly in the narrow and limited sense to which we have already referred would be valid under the later part of Art. 19(6), and if it indirectly impinges on any other right, its validity cannot be challenged on that ground. If the said law contains other incidental provisions which are not essential and do not constitute an integral part of the monopoly created by i.e., the validity of those provisions will have to be tested under the first part of Art. 19(6), and if they directly impinge on any other fundamental right guaranteed by Art. 19 (1), the validity of the said clause will have to be tested by reference to the corresponding clauses of Art. 19. It is obvious that if the validity of the said provisions has to be tested under the first part of Art. 19(6) as well as Art. 19(5), the position would be the same because for all practical purposes, the tests prescribed by the said two clauses are the same."

The instances given in the above decision of the State mono- poly in respect of road or air transport are pertinent. A law relating to such a monopoly would not normally impinge upon the citizens' fundamental right under Art. 19 (1) (f). Similarly a State monopoly to manufacture steel, armaments or transport vehicles or railway engines and coaches would not normally impinge on Art. 19(1) (f). If the law creating such monopolies were, however, to make incidental provisions directly infringing the citizens' right under Art. 19 (1)

(f) that would be a different matter. (see pages 710, 711). In Municipal Committee, Amritsar & Anr. v. State of punjab & Others(1) the validity of the Punjab Cattle Fairs (Regulation) Act 1967 came up

for examination. The Act declared that the State had the monopoly to hold cattle fairs and it prohibited all local authorities and individuals from holding such fairs at any place in the State. Shah J., delivering the judgment of the Court said at page 456 "By imposing restrictions upon the right to hold a fair, the citizens are not deprived of their property, and the freedom guaranteed by Art. 19 (1) (f) is not infring-

(1) [1969] 3 S.C.R. 447.

ed. The primary object of the Act is to give a monopoly to the State to hold cattle fairs.

As a necessary concomitant of that monopoly, holding of cattle fairs by local authorities and individuals is prohibited. The prohibition flows directly from the assumption of monopoly by the State and falls within the terms of Art. 19(6) of the Constitution. It is a provision of the law creating monopoly "basically and essentially necessary" for creating the State monopoly to prevent other persons from conducting the same business". The learned Advocate General maintains that it follows from the above decisions that when nationalisation of a transport service is made which is fully protected by Art. 19(6) no question arises of any deprivation of property. It is possible and likely that the value of the buses owned by the operators may be prejudicially affected or that they may not be able to carry on trade or business on the nationalised routes. According to the clear instance given in Akadshi Padhan's case to which reference has already been made a law relating to such a monopoly would not normally infringe the citizens' fundamental right under Art. 19(1) (f). Mr. Natesan for the appellants has pointed out that while promulgating the schemes of nationalisation temporary permits have been granted to the State Road Undertaking and the compensation which is sought to be paid to the permit holders is either nil or too small and there is no provision for payment of any compensation the operators for being deprived of the transport business or for the effect of the non-renewal of their permits. While examining the above contentions it may be stated that there is no dispute on certain matters. The first is that according to the schemes of nationalisation which have been impugned all existing permits must come to an end before each scheme will become enforceable on a particular route. In other words by virtue of the scheme the existing permits of any operator will not be cancelled. None of the properties. or assets of the appellants is going to be acquired. So far as the renewal of a permit is concerned this Court has already held that no operator can claim renewal as a matter of right. Section 68-G of the Act, contains the principle and method of determination of compensation if any existing permit is cancelled or its terms are modified. In the present cases. however. no such question arises because no occasion for cancellation of existing permits can arise in view of the terms of the impugned scheme. The effect of nationalisation on the properties or business of the operators is not such as cannot be regarded to be a reasonable restriction in the interest of the general public within Art. 19 (5) in the same way as a state monopoly must be presumed to be reasonable and in the interest of the general public so far as Art. 19(1)(g) and Art. 19(6) are concerned this is view of the fact that the tests prescribed by clauses 5 and 6 of Art. 19 are the same : (vide Akadshi Padhan's case). We are accordingly unable to sustain the challenge under Art. 19(1) (f) even of such a challenge is open to the appellants in the light of what has been observed earlier. It has next been argued that the nationalisation scheme were vitiated for various reasons. The first submission is that a policy decision was taken by the government which was embodied in the Government Order dated June 17,

1967. It was stated therein that the Government had considered carefully the question of extension of nationalisation of passengers transport in the State. In modification of the existing policy the Government had decided that the types of routes set out should be nationalised. The Government proceeded to direct that the routes in the categories mentioned should be nationalised as and when the permits of the private operators expired. On the same day by another Government Order the Government constituted an ad hoc committee "to work out the details in all aspects for implementing the policy decision." One of the members of that committee was the Secretary to the Government, Home Department. The Committee was to submit its report within a fortnight. After the report had been submitted schemes were published under s. 68-C by the Secretary, Industries, Labour and Housing Department, hereinafter referred to as the Secretary industries. He purported to do so under rule 23A of the Rules of business. Objections which were fixed by the operators were heard and the schemes considered by the Secretary Home, under s. 68-D who had been so authorised under s. 23A. According to the appellants the Secretary, Home, while hearing the objections under s. 68-D of the Act was acting as a quasi-judicial tribunal. Since he was a member of the committee which had made the report in accordance with which the schemes had been published under s. 68-C it is claimed that the Secretary, Home. acted as a Judge in his own cause. In other words, he participated in the policy decision of the Government and then he exercised the powers under s. 68-D of hearing objections and considering the merits of the schemes. This, it is suggested, is wholly contrary to the rules of natural justice the hearing by the Secretary, Home, being vitiated by bias. Learned single Judge of the Calcutta High Court in East India Electric Supply, & Traction Co., Ltd. v. S. C. Dutta Gupta & Ors. (1) held that where a number of a rating Committee had already prejudged at least one of the issues that had been raised before it, his inclusion as a member made the Rating Committee and its functioning contrary to law. In Dosa Satyanarayanamurthy etc. v. The Andhra Pradesh (1) C.W.N. 162.

State Road Transport Corporation(1) the Minister in charge of the portfolio of Transport had presided over the sub- committee constituted to implement the scheme of nationalisation of bus services. It was contended there that the same Minister could not be a Judge in his own case as he was biased against the private operators. That contention was negatived by this Court. It was pointed out that any decision arrived at by the Sub-Committee was not final or irrevocable and it was only a policy decision. The sub-committee was only meant to advise the State Government how to implement the policy of nationalisation. That could not either expressly or by necessary implication involve a predetermination of the issue. The Minister, therefore, could not be said to have any such bias as disqualified him from hearing objections under Chapter IV-A of the Act in which S. 68-D occurs. This case is quite apposite for disposing of the submission based on bias.

The second reason advanced in support of the challenge to the schemes is based on what is described as complete absence-of coordination so far as the various schemes are Concerned. The objectionable feature of the schemes is stated to be, that there was no proper coordination of the services on the various routes which are to be nationalised and which should have been done by an integrated scheme. We are unable to see that if the schemes conformed to the requirements of S. 68-C why they should be struck down on the only ground that routes were to be nationalised as and when permits of private operators on those routes expired. Section 68-C permits the State Transport undertaking to operate a service in relation to any area or route or even a portion thereof and to the

exclusion complete or partial, of other persons. The decision in Shrinivasa Reddy & Others v. The State of Mysore & Others(2) can be of no avail to the appellants because no question arose of coordination of service on the various routes which were to be nationalised and in respect of which the nationalisation was to become effective from different dates. In that case it was pointed out that piecemeal nationalisation of a particular route is not permissible. It is quite clear that each route can be nationalised and it is difficult to comprehend that when the law empowers that to be done any further conditions should be superimposed of coordinating the services on all the routes which are proposed to be nationalised. The following observations with regard to the above decision in Dosa Satyanarayanamurthy's case explain the law on the point :

> "This Court did not lay down that there cannot be any phased programme in the nationalisation of transport services in a State or in a district nor did it hold (1) [1961] 1 S.C.R. 642. (2) (1960) 2 S.C.R. 130.

that there cannot be more than one scheme for a district or a part of a district, the observations of this Court in regard to the implementation of a scheme piecemeal were aimed at to prevent an abuse of power by dis-

criminating against some operators and in favour of others in respect of a single scheme".

Learned Counsel for the appellants laid a great deal of emphasis on the manner in which the policy decisions were taken by the Government and the mandatory language contained in the Government Orders already referred to which hardly left any discretion or choice to the authority considering the objections under s. 68-D of the Act. We are unable to see how any authority who exercises, individual power under s. 68-D is bound by what has been stated as a policy decision of the Government. In fact his main function is to hear such objections as may be referred to the schemes pub- lished under s. 68C and approve or modify the schemes so published after giving an opportunity to. the objector. His function being of a quasi-judicial nature he is to bring a judicial approach,. to the matter and even if he happens to be a servant of the government he is not 'bound in any way to carry out or endorse the policy of the Government without discharging his duties as contemplated by s. 68-D. We are unable to hold nor has anything been shown to us except the suggestion that the schemes as published under s. 68-C were approved in toto that the authority acting under s. 68-D had not discharged his duties in a proper and judicial manner. The mere fact that the schemes were approved' without any modification cannot establish that the Secretary, Home. who exercised the functions of the State Government under s. 68-D, had failed to carry out his functions as laid down in s. 68-D or that he had approved the schemes without any modification, merely because the Government orders contained language of mandatory nature.

In the result these appeals fail and they are dismissed but owing to the nature of the points raised there will be no order as, to costs.

S.B.W. Appeals dismissed.