Gullapalli Nageswara Rao And Others vs Andhra Pradesh State Road ... on 5 November, 1958

Equivalent citations: 1959 AIR 308, 1959 SCR SUPL. (1) 319, AIR 1959 SUPREME COURT 308, 1959 SCJ 967 1958 ANDHLT 1014, 1958 ANDHLT 1014

Bench: Natwarlal H. Bhagwati, Bhuvneshwar P. Sinha, K.N. Wanchoo

PETITIONER:
GULLAPALLI NAGESWARA RAO AND OTHERS

Vs.

RESPONDENT:
ANDHRA PRADESH STATE ROAD TRANSPORTCORPORATION AND ANOTHER

DATE OF JUDGMENT:
05/11/1958

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
DAS, SUDHI RANJAN (CJ)
BHAGWATI, NATWARLAL H.
SINHA, BHUVNESHWAR P.
WANCHOO, K.N.

CITATION:
1959 AIR 308 1959 SCR Supl. (1) 319
CITATOR INFO :

R	1959 SC1376	(2,4)
R	1960 SC1073	(13)
RF	1961 SC 82	(8,12)
RF	1961 SC1361	(8)
F	1961 SC1575	(6)
F	1962 SC1110	(8)
R	1962 SC1183	(10)
R	1962 SC1621	(79,118)
F	1963 SC 416	(7)
RF	1964 SC 381	(75)
R	1964 SC 436	(8,10)
R	1965 SC1017	(16)
RF	1966 SC 81	(5)
R	1966 SC1571	(8)
RF	1967 SC1507	(6)
RF	1967 SC1815	(10)
D	1970 SC1095	(3,8)
F	1971 SC1594	(9)
R	1972 SC1863	(12)

F	1973	SC 974	(8)
RF	1973	SC2237	(3)
D	1974	SC 669	(12)
R	1976	SC2428	(9)
RF	1979	SC 777	(31)
C	1981	SC 660	(4,8)
E	1990	SC1402	(20)
OPN	1990	SC1744	(6)
RF	1991	SC 933	(10)

ACT:

Road Transport-Nationalisation-Scheme proposed by State Trans-port Undertaking approved by Government-Procedure, if violative of fundamental rights-Scheme, if ultra vires-State Government, if must act judicially in approving the scheme Colourable legislation', Meaning of-Motor Vehicles Act (IV Of 1939), as amended by Act 100 of 1956, Ch. IVA, ss. 68C, 68D-Constitution of India, Art. 31.

HEADNOTE:

With a view to nationalise the road transport services under Ch. IV A of the Motor Vehicles Act, 1939 (IV Of 1939), inserted into it by the amending Act 100 of 1956, the General Manager of Andhra State Transport Undertaking published a scheme under s. 68C of the Act in the Official Gazette and invited objections thereto. By an order of the Chief Minister the objections were received and heard by the Secretary to the Home Department, who was in charge of Transport, but were decided by the Chief Minister. The State Government approved of the scheme and published it in the Official Gazette. The petitioners, who were plying their buses on various routes in the Krishna District as permit-holders under the Act, apprehending that their routes would be taken over by the newly established State Corporation in implementation of the scheme, applied to this Court for the protection of their fundamental rights to carry on their business. It was contended, inter alia, on their behalf, (i) that Ch. IVA of the Act was a piece of colourable legislation whose real object was to take over their business, under cover of cancellation of permits, in contravention of Art. 31 of the Constitution, (2) that the scheme itself was ultra vires the Act, for the reason, amongst others, that the State Government whose duty it was to act judicially in approving the scheme, had transgressed certain fundamental principles of natural justice.

Held (Per curiam), that the question of colourable legislation was, in substance, really one of legislative competence of the legislature that enacted it. The legislature could only make laws within its legislative competence. Its legislative field might be circumscribed by

specific legislative entries or limited by fundamental rights created by the Constitution. The legislature could not over-step the field of its competency, directly or indirectly. It would be for the Court to scrutinize if the legislature in purporting to make a law within its sphere, in effect and substance,

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reached beyond it, it had infact the power to the law, its motive in making it would be irrelevant.

K. C. Gajapaji Narayan Deo v. The' State of Orissa, [1954] S.C.R. i, followed.

The State of Bihar v. Maharajadhiraja sir Kameshwar singh of darbhangha [1952] S.C R 889 considered

So judged; it could not said that CH. IVA of the Act was a colourable piece of legislation.

The power vested in the Regional' Transport Authority by s. 68F of the Act involved no transfer of business of the-,existing permit-holders to the State Transport Undertaking-nor could the latter be said thereunder to take over any assets of the former. Section 68G of the Act in providing for compensation for un expired period of the permit did not imply that CH. IVA of the Act involved any transfer of property or possession so as to entitle the permit-holder to any compensation under Art. 31(2) Of the Constitution. Chapter 1VA of the Act did not, therefore infringe the fundamental right of the petitioners under' Art. 31 Of the Constitution.

Per Das, C. J., Bhagwati, and Subba Rao, jj.-While the purpose of s. 68C of the Act was no doubt to provide a scheme of road transport service on the lines prescribed by it, the scheme proposed might affect the rights of individual permit holders by excluding them, partially or completely, from the business in any particular route or routes, and the procedure prescribed by s. 68D and Rules 8 and 10 framed under the Act, required that the Government should hear both the objectors and the State Transport Undertaking before approving or modifying the scheme. There was no doubt, therefore, that the State was deciding a lis and it was to do so judicially.

Province of Bombay v. Kusaldas S. Advani, [1950] S.C.R. 621, Nagendra Nath Bora v. Commissioner, Hills Division, [1958] S.C.R. 124o and Express Newspapers Ltd. v. The Union of India, [1959] S.C.R. 12, relied on.

Franklin v. Minister of Town and Country Planning, [19481 A. C. 87, held inapplicable.

It was a fundamental principle of natural justice that the authority empowered to decide a matter must have no bias in it and another, no less fundamental, was that where the Act provided for a personal hearing the authority that heard the matter must also decide it. The procedure followed in the instant case whereby the Home Secretary, in charge of Transport, himself a party to the dispute, heard the objections and the Chief Minister decided them, violated

those principles, and the order of the State Government approving the scheme, therefore,must be quashed.
Per Sinha and Wanchoo, jj.-The sole object of Ch. IVA, of the Act was to nationalise the road, transport services and the inquiry envisaged by it was of a limited character. That inquiry
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was meant to find out whether the scheme propounded was in public interest as required by s. 68C of the Act, and not to adjudicate rival claim of permit-holder on the one hand and the State Transport Undertaking on the other ; for, on approval of the scheme, exclusion of private transport as proposed by the scheme was bound to follow as a matter of course. There could, therefore, be no lis, and the Government in approving or modifying the scheme under Ch. IVA and the Rules framed thereunder must be held to act in its normal administrative capacity. No objections could be taken, in the instant case, to the procedure adopted by the Government in empowering the Secretary to hear objections while the Chief Minister decided them, and the Secretary could in no sense be a party to any dispute.
Province of Bombay v. Kusaldas S. Advani, [1950] S.C.R. 621, Nagendra Nath Bora v. Commissioner, Hills Division, [1958] S.C.R. 1240 and Express Newspapers Ltd. v. The Union of India, [1959 S.C.R. 12, referred to.
Franklin v. Minister of Town and Country Planning, [19481 A.C. 87, applied.
Robinson v. Minister of Town and Country Planning, [1947] I All E. R. 851, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 100 of 1958. Petition under Article 32 of the Constitution for enforcement of fundamental rights.

M. K. Nambyar, K. Mangachari, G. Suryanarayana and P. V. R. Patachari, for the petitioners and intervener. M. C. Setalvad, Attorney General for India, R. Ganapathi lyer, P. R. Ramachandra Rao and T. M. Sen, for the respondents.

1958. November 5. The Judgment of Das, C. J., Bhagwati and Subba Rao, JJ., was delivered by Subba Rao, J. Sinha and Wanchoo, JJ., delivered separate judgments. SUBBA RAO, J.-This is an application under Art. 32 of the Constitution for the enforcement of the petitioners fundamental right to carry on the business of motor transport in Krishna District in Andhra Pradesh, and for prohibiting the respondents from taking over the routes on which the petitioners have been plying their stage carriages.

The petitioners have been carrying on motor transport business in Krishna District for several years past by obtaining permits under the Motor Vehicles Act, 1939 (IV of 1939), as amended by Act 100

of 1956, hereinafter called the Act, in respect of various routes. They estimate the value of their investment in the -business at a sum of Rs. 20,00,000.

The amending Act inserted a new Chapter IV-A in the Act providing for the State Transport Undertaking running the business to the exclusion, complete or partial, of all other persons doing business in the State. Chapter IV-A provided for a machinery called the State Transport Undertaking, defined under s. 68-A(b) as an undertaking providing road transport service, to run the transport business in the State. In exercise of the powers conferred by s. 68-C of the Act, one Shri Guru Pershad, styled as the General Manager of the State Transport Undertaking of the Andhra Pradesh Road Transport, published a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated transport service in public interest to operate the transport service mentioned therein with effect from the date notified by the State Government. Objections were in- vited within 30 days from the date of the publication of the proposal in the Official Gazette, viz., November 14, 1957. 138 objections were received. Individual notices were issued by the State Government by registered post to all the objectors. On December 26, 1957, the Secretary to Government, Home Department, in charge of transport, heard the objections. 88 of the objectors represented their cases through their advocates ; three of them represented their cases personally and the rest were not present at the time of hearing. After considering all the objections and after giving an opportunity to the objectors, their representatives and the representatives of the State Transport Undertaking the State Government found that the objections to the scheme were devoid of substance. On that finding, the State Government approved of the scheme in G.O. Ms. 58, Home (Transport IV), dated January 7, 1958, and the approved scheme was published in the Andhra Pradesh Gazette dated January 9, 1958. The scheme was ordered to come into force with effect from January 10, 1958. The Government of Andhra Pradesh also established a Road Transport Corporation under the Road Transport Corporations Act, 1950 (LXIV of 1950), called the Andhra Pradesh Road Transport Corporation, with effect from January I I,' 1958, and by its order dated January 11, 1958, the said Corporation was empowered to take over the management of the erstwhile Road Transport Department. The said Transport Corporation is now implementing the scheme of nationalisation of bus transport under a phased programme. The petitioners, who are plying their buses on various routes in Krishna District, apprehending that their routes would be taken over by the Corporation pursuant to the aforesaid scheme, seek the aid of this Court to protect their fundamental right to carry on their business against the action of the State Corporation on various grounds. Mr. M.K. Nambiar, appearing for the petitioners, contends that the scheme, in pursuance of which the bus routes operated by the petitioners are sought to be taken over by the State Road Transport Corporation, is ultra vires and illegal on two grounds, viz., (a) that the provisions of Chapter IV-A of the Act violates the fundamental rights secured to the citizens by the Constitution and (b) that the scheme frained under the, Act is ultra vires the Act. The first ground is sought to be supported by the contention that Chapter IV-A of the Act, in substance and effect, authorizes the State to acquire the undertakings of citizens without providing for compensation for the entire undertakings and therefore it is a fraud on the Constitution, particularly on Art. 31 thereof. Shortly stated, his argument is that under Art. 31 of the Constitution no law shall be made for the transfer of ownership or right to possession of any property to the State or to a Corporation without fixing the amount of compensation or specifying the principles on which compensation is to be determined and given, and that Chapter IV-A of the Act is a colourable legislation enabling such a

transfer of ownership without providing for compensation for the property transferred, under the guise of cancellation of a permit.

To appreciate this argument it would be convenient, at this stage, to read the relevant provisions of the Articles of the Constitution, omitting the words unnecessary for the purpose of this case.

Art. 191 : All citizens shall have the right-

(g) to practise any profession, or to carry on any occupation, trade or business.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to--

(i).....

(ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Art. 311: No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any 'Court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

The Constitution (First) Amendment Act of 1951, which came into force on June 18, 1951, amended cl. (6) of Art. 19 by adding sub-cl. (ii) to that clause, along with other amendments. Clause (2) of Art. 31 has been amended, and cl. (2A) has been inserted by the Constitution (Fourth) Amendment Act, 1955. Clause (2A) has been inserted with a view to supersede the majority decisions of this Court in the cases of State of West Bengal v. Subodh Gopal Bose (1), Dwarkadas Shriniwas of Bombay v. Sholapur Spinning and Weaving Co. Ltd. (2) and Saghir Ahmed v. State of U.P. (3). In Subodh Gopal's case, a majority of a Bench of this Court held:

> Clauses (1) and (2) of Art. 31 are thus not mutually exclusive in scope and content, but should in my view, be read together and understood as dealing with the same

subject, namely, the protection of the right to property by means of the limitations on the State power referred to above, the deprivation contemplated in clause (1) being no other than the acquisition or taking possession of property referred to in clause (2)." In Dwarkadas's case (1),this Court, while confirming the aforesaid principle, held that the word 'acquisition' has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily and need not be confined to the acquisition of legal title by the State in the property taken possession of In Saghir Ahmed's case (3) applying the said principles, this Court held (at p. 728):

" If the effect of prohibition of the trade or business of the appellants (citizens) by the impugned legislation amounts to deprivation of their property or interest in a commercial undertaking within the meaning of Art. 31 (2) of the Constitution, does not the legislation offend against the provision of that clause inasmuch as no provision for compensation has been made in the Act? "

(1) [1954] S.C.R. 587, 608.

(2) [1954] S.C.R. 674.

(3) [1955] 1 S.C.R. 707, 728.

It may be noted that though the said decision was given after the Constitution (First) Amendment Act 195 1, amending Art. 19 (6), it dealt with a matter that arose before the said amendment came into force. In the aforesaid decisions, this Court by a majority broadly laid down the two principles: (a) that both cls. (1) and (2) of Art. 31 dealt with the doctrine of 'eminent domain'; they dealt with the topic of 'compulsory acquisition of property'; and (b) that the word `acquisition' does not necessarily imply acquisition of legal title by the State in the property taken possession of, but may comprehend cases where the citizen has been 'substantially dispossessed' of the right to onion the property, with the result that the right to enjoy property has been seriously' impaired or the value of the property has been 'materially' reduced by the impugned State legislation.

The Constitution (Fourth) Amendment Act, 1955, amended cl. (2) of Art. 31 and inserted cl. (2A) in that Article. The amendments, in so far as they are relevant to the present purpose, substitute in place of the words 'taken possession of or acquired' the words 'compulsorily acquired or requisitioned' and provide an explanation of the words `acquired and requisitioned' in cl. (2A). The result is that unless the law depriving any person of his property provides for the transfer of the ownership or right to the possession of any property to the State, the law does not relate to 'acqtuisition or requisition' of property and therefore the limitations placed upon the legislature under cl. (2) will not apply to such law. While realising this legal position brought about by the amendment to the Con- stitution, the learned counsel contends that the right to do business is property as held in Saghir Ahmad's case(1) and that Chapter IV-A of the Act in effect transfers ownership of that business to the Corporation, owned or controlled by the State, though not directly but by the dual process of preventing the citizen from doing the business and enabling the Corporation to do the same business in his place and that that result is effected by a device with a

view to avoid payment of (1) [1955] i S.C.R. 707, 728.

compensation for the entire business so transferred. The colourable nature of the legislation, the argument proceeds, lies in its device or contrivance to evade limitations imposed under Art. 31 (2). To solve the problem presented, it is necessary to have a correct appreciation of the phrase `colourable legislation'. This Court considered this question in The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga(l). In that case the constitutional validity of the Bihar Land Reforms Act, 1950 (Bihar 30 of 1950), was questioned. In the context of the Bihar Land Reforms Act, 1950 (Bihar 30 of 1950), it was contended that the impugned Act was a fraud on the Constitu- tion and therefore void. It -was stated that the Act, while pretending to comply with the Constitutional provisions when it provided for the payment of compensation, in effect produced a scheme for non-payment of compensation by shift or contrivance. Mahajan, J., as he then was, in rejecting the argument observed at p. 947, thus:

> " All these principles are well-settled. But the question is whether they have any application to the present case. It is by no means easy to impute a dishonest motive to the legislature of a State and hold that it acted mala fide and maliciously in passing the Bihar Land Reforms Act or that it perpetrated a fraud on the Constitution by enacting this law. It may be that some of the provisions of the Act may operate harshly on certain persons or a few of the zamindars and may be bad if they are in excess of the legislative power of the Bihar Legislature but from that circumstance it does not follow that the whole enactment is a fraud on the Constitution. From the premises that the estates of half-a- dozen zamindars may be expropriated without payment of compensation, one cannot jump to the conclusion that the whole of the enactment is a, fraud on the Constitution or that all the provisions as to payment of compensation are illusory."

The aforesaid observations lend support to the argument that the doctrine of colourable legislation imputes dishonest motive or mala fides to the State (1) [1952] S.C.R. 889.

making the law. But, Mukherjea, J., as he then was, clarified the legal position in K. C. Gajapati Narayan Deo v. The State of Orissa (1). It was contended in that case that the Orissa Estates Abolition Act, 1952, was a colourable legislation and as such void. Adverting to that argument, Mukherjea, J., as he then was, says at p. 10 thus:

> " It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power..... ..... If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific

> legislative entries, or if there are limitations on the legislative authority in the shape of fundamedtal rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears on proper examination, to be a mere presence or disguise. As was said by Duff, J., in Attorney-General for Ontario v. Reciprocal Insurers (1924 A. C. 328 at p. 337):
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> " Where the law making authority is of a limited or qualified character it may be necessary to examine (1) [1954] S.C.R. i.

with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing.' In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is, something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method."

We have quoted the observations in extensor as they neatly summarise the law on the subject. The legal position may be briefly stated thus: The legislature can only make laws within it legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot over-step the field of its competency, directly or indirectly. The Court will scrutinize the law to ascertain whether the legislature by device put-ports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant.

The learned counsel for the petitioners can only succeed if he can establish' that the provisions of Chapter IV-A constitute colourable legislation within the meaning of the aforesaid definition. To test the validity of the argument, it may be summarised thus : Business is I property' within the meaning of Art. 191 (g) of the Constitution. Chapter IV-A of the Act transfers the business to the Corporation controlled. by the State Government. Such a law should have provided for payment of compensation for the business transferred to the State Corporation ; instead, it adopted the device of cancelling the permit of the citizen and giving it to the Corporation and providing compensation to the citizen only for tile unexpired period of the permit.

We shall now proceed to ascertain whether any of the aforesaid ingredients of device or contrivance are established in this case. Does Chapter IV-A, in effect and substance, authorize, in law or fact, the transfer of the business of the citizens to the State or a Corporation, owned or controlled by the State

? Under Art. 191 of the Constitution, every citizen has a fundamental right to carry on any business subject to reasonable restrictions imposed by the State under cl. (6) of Art. 19 in the interest of the general public. The Constitution (First) Amendment Act, 1951, reserved to the State the right to make law for carrying on by the State or by a Corporation, owned or controlled by the State, any business to the exclusion, complete or partial, of the citizens or otherwise. The Constitution, therefore, enables the State to make a law placing reasonable restrictions on the right of a citizen to do business or to create a monopoly or to make a law empowering the State to carry on business to the exclusion of a citizen. The right to carry on business in transport vehicles on public pathways is certainly one of the fundamental rights recognized under Art. 19 of the Constitution. The Motor Vehicles Act, 1939 (IV of 1939), regulates the right of a citizen to carry on the said business for protecting the rights of the public generally. 'Permit' is defined under cl. (20) of s. 2 of the Act to mean the document issued by the Commission or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle. Section 57 of the Act prescribes the procedure for applying for and granting permits to carry on the business in transport vehicles on public highways. Section 47 lays down the matters to be considered by the Regional Transport Authority in the disposal of applications for such transport carriers. Section 59 gives the conditions of every permit and also prohibits the transfer of permit. from one person to another except with the permission of the Transport Authority. Under s. 60, the Transport Authority which granted permit may cancel the permit or may suspend it for such period as it thinks fit for any of the reasons mentioned therein. Section 61 provides for cases where, a permit-holder dies. That section enables the success-. sor to use the permit for a period of three months and to get the permit transferred to him subject to the conditions laid down therein. Section 68-F authorises the Regional Transport Authority, for the purpose of giving effect to an approved scheme in respect of a notified area or notified route, to refuse to entertain any application for the renewal of any other permit, to cancel any existing permit, to modify the terms of any existing permit so as to render the permit ineffective beyond a specified date, and to reduce the number of vehicles authorised to be used under the permit. It is manifest from the aforesaid provisions that the Regional Transport Authority can, in exercise of its regulatory power conferred on it in the interest of the public, issue a permit to a 'person in regard to a stage carriage authorising him to use the same in a particular route for a particular period subject to the conditions laid down in the permit, suspend or cancel the same under specified conditions, and renew or refuse to renew the same after the expiry of the period subject to the conditions laid down in the Act. Under Ch. IV-A, if a scheme has been promulgated empowering the State Transport Undertaking to take on hand the transport service in relation to any area, route or portion thereof to the exclusion of any person, who has been carrying on the business in that route, the Transport Authority is empowered to cancel the existing permit and issue a permit to the State Transport Undertaking. It cannot be said that if the Transport Authority cancels the permit of a person carrying on his transport business in a route and gives it to another, the process in. volves a transfer of business or undertaking of the quondam permit-holder to the new entrant. Indeed the process does not involve even a transfer of the permit from one to another. The true position is that one permit comes to an end and another permit comes into being. The power of cancellation of a permit in favour of one and issuing a new permit to another are necessary steps in the regulatory jurisdiction entrusted to the Regional Transport Authority. The business of one has nothing to do with the business of another; they are two independent businesses carried on

under two different licences. If that be the true legal position in the case of issue of permits -before -Chapter IV-A was inserted in the Act, we cannot see that the power of cancellation of an existing permit and issuing one to the State Transport Undertaking should involve a transfer of the previous permit-holder's business to the State Transport Undertaking. The argument that the process contemplated by s. 68-F of the Act involves two integrated steps, viz., cancelling the existing permit and preventing the previous permit-holder from doing the business and then issuing a permit to a nominee of the State to enable it to do the same business and thereby, in effect and substance, transferring the business of the existing permit-holder to the State or its nominee, appears to be attractive, but, in our view, it is fallacious. It may be that by the said process the existing permit-holder is precluded from doing his business and it may also be that the State Transport Undertaking carries on a similar business; but by no stretch of language or extension of legal fiction can it be said that the State Transport Undertaking is doing the same business which the previous permit- holder was doing. If there is no transfer in the case of cancellation of a permit in favour of one and issue of a new permit to another, equally there cannot be any such transfer in the case of issue of a permit to the State Transport Undertaking. Looking at the business not simply from the standpoint of the right to do it or the activity involved in it, but also from the standpoint of its assets, it becomes clear that no assets pertaining to the business of the quondam permit-holder are transferred to the State Transport Undertaking. Though the cancellation of the permit has the effect of crippling his business, none of the assets of the business is taken over by the State Transport Undertaking; he is left in the possession of the entire assets of the business. It is no doubt true that in the context of the scheme of nationalisation he may not be able to make use of his assets in other routes or dispose of them at a great advantage to himself; but, it cannot be said that by cancelling the permit, what is left with him is only the ' husk'. In fact the entire assets of the business are left with him and the State Transport Undertaking has not taken over the same.

Lastly it is said that ss. 68-G of the Act which provides for payment of compensation to the holder of the permit, indicates that the legislature proceeded on the basis that the cancellation of a permit involved a transfer of property' from the previous permit-holder to the State. In our view, no such irresistible conclusion flows from the said provision; as the permit is cancelled before the expiry of the term fixed therein, the legislature thought it fit and proper to give some compensation to the permit-holder who is prevented from doing his business for the unexpired period of the permit. Whether it is enacted by way of abundant caution, as the learned Attorney General says, or the provision is made by the legislature to mitigate the hardship that is caused to the permit-holder by the premature cancellation of the permit, we find it difficult to draw the inference from the said provision that the legislature assumed that a transfer of the business is involved in the process laid down in Chapter IV-A. We therefore bold that Chapter IV-A of the Act does not provide for the transfer of ownership or the right to possession of any property to the State or to a Corporation, Owned or controlled by the State. Under Art. 31 of the Constitution unless there is such a transfer, the law shall be deemed not to provide for compulsory acquisition or requisition of property ; and therefore, in such a case, no compensation need be provided for under Art. 31(2) of the Constitution. We therefore hold that Chapter IV-A of the Act does not infringe the fundamental right of the petitioners under Art. 31 of the Constitution of India.

The next argument of the learned counsel for the petitioners is that even if Chapter 1V-A of the Act is constitutionally valid, the petitioners could be deprived of their rights only in accordance with the law enacted for the purpose and in the manner provided therein, and that in the present case, the scheme was promulgated in derogation of the provision of the said Chapter. The learned counsel contends that the provisions of Bs. 68-C and 68-D have not been complied with in framing the scheme. The learned counsel's contentions in this regard fall under different sub-heads, and we shall proceed to consider them seriatim.

The first contention is that no State Transport Undertaking is constituted under the Central Act and therefore the scheme initiated by the said Transport Undertaking constituted under the Motor Vehicles (Hyderabad Amendment) Act, 1956, ",as bad. To appreciate this argument some of the facts may be stated. Before the State of Andhra Pradesh was formed in November 1956, eight districts, popularly called the Telengana, which are now in the Andhra Pradesh State, were formerly part of the Hyderabad State. On September 29, 1956, the Motor Vehicles (Hyderabad Amendment) Act, 1956, became law, whereunder Chapter IV-A was inserted in the Central Act in its application to the State of Hyderabad. Under s. 68_ A of Chapter IV-A of that Act, the State Transport Undertaking was defined to mean the Road Transport Department of the State providing road service. Under that Act, therefore, the Road Transport Department of the Hyderabad State was functioning as a statutory authority. After the States Reorganisation Act came into force, the said eight districts of the Hyderabad State became part of the State of Andhra Pradesh; with the result that the Road Transport Department of the Hyderabad State became the Road Transport Department of the State of Andhra Pradesh, though it was exercising its powers only in respect of that part of the Andhra Pradesh State, popularly known as Telengana. After the Andhra Pradesh State was formed, Sri Guru Pershad, styled as the General Manager of the Andhra Pradesh Road Transport Undertaking, published the scheme under s. 68-C of the Act. The argument is that the State Transport Authority constituted under Chapter IV-A of the Hyderabad (Amendment) Act was not legally constituted as the State Transport Undertaking under the Central Act and, therefore, the initiation of the scheme by the Hyderabad State Transport Undertaking, which has no legal status under the Central Act was bad. It is also pointed out that the State Transport Authority under the Hyderabad Act differs from that under the Central Act in the following three, respects: (1) statutory parentage; (2) character and constitution ; and (3) territorial jurisdiction; and therefore the authority constituted under the Hyderabad Act cannot function under the Central Act. This argument has no relevancy to the facts of the present case. We are not concerned in this case with a statutory authority created under one Act and pressed into service for the purpose of another Act, when the latter has adopted the said statutory authority as one constituted under that Act. Here there is the Andhra Pradesh Road Transport Department providing road transport service in Telengana, which is a part of that State, and that Department, when it was a part of the Hyderabad State was functioning as part of the Hyderabad State Secretariat. The mere fact that the Road Transport Department of the Andhra Pradesh State was originally part of a department of another State and came under the definition of the State Transport Undertaking of the Hyderabad Act could not make the said department any the less the Road Transport Department of the Andhra Pradesh State. Assuming. for a moment that the Hyderabad Act is still in force in the Telengatia area, there is nothing in law which prevents a department coming under the definition of two statutes. Under the Act, the State Transport Undertaking means an Undertaking providing road trasport service where such undertaking is

carried on by a State Government. This section does not prescribe the parentage of the undertaking or impose a condition that the undertaking should be providing transport service throughout the State. The State Government maintained the department for providing road transport service and therefore the department clearly falls within the definition of State Transport Undertaking. The citation from Salmond on, Jurisprudence to the. effect that the law in creating legal persons always does so by personifying some real thing does not touch the question that falls to be decided in this case; for, the real thing, viz., the department, falls under the definition of both the Acts and therefore it can function as a statutory authority under both the -Acts. We therefore hold that the Road Transport Department of the Andhra Pradesh Government is a State Transport Undertaking under the Central Act and therefore it was within its legal competence to initiate the scheme.

The next objection raised is that the scheme was published by Sri Guru Pershad, the General Manager of the State Transport Undertaking and that it has not been established that he had been legally authorized to represent the State Transport Undertaking, the statutory authority constituted under the Act. We have already held that the Transport Department of the disintegrated Hyderabad State continued to function as the Transport Department of the Andhra Pradesh State after the merger of Telengana areas with the Andhra State. In the affidavit filed by the petitioners, it is stated that Sri Guru Pershad was the General Manager of the Road Transport Department of the erstwhile Hyderabad State, that he was never appointed as the General Manager of the State Transport Undertaking of the Andhra Pradesh State and that, therefore, he had no legal authority whatever to publish the scheme. In the counter affidavit filed on behalf of the first respondent, it is averred that the General Manager of the Andhra Pradesh Road Transport, which was a State Transport Undertaking within the meaning of s. 68-B of the Act, prepared a scheme and that was published in the Andhra Pradesh Gazette on November 14, 1957. It is therefore a common case that Sri Guru Pershad was the General Manager of the Road Transport Undertaking of the erstwhile Hyderabad State. It is not denied that Sri Guru Pershad continued to be the General Manager of that Department functioning in Andhra Pradesh. We have already held that the same department was the statutory authority functioning under the Central Act. Sri Guru Pershad was also the General Manager of that undertaking. In the circumstances, there is no substance in the contention that Sri Guru Pershad should have been appointed as the -General Manager of the Undertaking under the Central Act. This is the first argument under a different garb. The preexisting Road Transport Department of the erstwhile Hyderabad State, with its General Manager, Sri Guru Pershad, continued to function as a statutory authority under the Central Act and therefore he had the legal authority to represent the State Transport Undertaking, which was a statutory authority. lie published the scheme and subscribed it as Guru Pershad, the General Manager of the State Transport Undertaking (Andhra Pradesh State Road Transport). The notification, therefore, must be held to have been issued by the State Transport Undertaking functioning under the Central Act.

The learned counsel then contends that the scheme published does not disclose that the State Transport Undertaking was of the opinion that the scheme was necessary in the interests of the public and, therefore, -is the necessary condition for the initiation of the scheme was not complied with, the scheme could not be enforced. Section 68-C says that where any State Transport Undertaking is of opinion that for specified reasons it is necessary in the public interest that road port service should be run or operated by the Transport Undertaking, it may prepare a scheme

giving particulars of the scheme and publish it in the Official Gazette. An express recital of the formation of the opinion by the Undertaking in the scheme is not made a condition of the validity of the scheme. The scheme published in terms of the section shall give particulars of the nature of the service proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto. It is true that the preparation of the scheme is made to depend upon the subjective opinion of the State Undertaking as regards the necessity for such a scheme. The only question, therefore, is whether the State Transport Undertaking formed the opinion before preparing the scheme and causing it to be published in the Official Gazette. The scheme published, as already noticed, was signed by Guru Pershad, General Manager, State Transport Undertaking, Andhra Pradesh Road Transport. The preamble to the scheme reads :

> " In exercise of the powers conferred by section 68-C of the Motor Vehicles Act, 1939, it is hereby proposed, for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service in public interest, to operate the following transport services as per the particulars given below with effect from a date to be notified by the Government."

We have already held that Guru Pershad represented the State Transport Undertaking. The scheme was proposed by the said Undertaking in exercise of the powers under s. 68-C of the Act for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service in public interest. Except for the fact that the word 'opinion' is omitted, the first part of the section 68-C is incorporated in the preamble of the scheme ; and, in addition, it also discloses that the scheme is proposed in exercise of the powers conferred on the State Transport Undertaking under s. 68-C of the Act. The State Transport Authority can frame a scheme only if it is of opinion that it is necessary in public interest that the road transport service should be run or operated by the Road Transport Un- dertaking. When it proposes, for the reasons mentioned in the section, a scheme providing for such a transport undertaking, it is a manifest expression of its opinion in that regard. We gather from a reading of the scheme that the State Transport Undertaking formed the necessary opinion before preparing the scheme and publishing it. The argument of the learned counsel carries technicality to a breaking point and for the aforesaid reasons, we reject it. The next attack of the learned counsel centres round the provisions of s. 68-D (2) of the Act. It would be convenient, before adverting to his argument, to read s. 68-D and the relevant rules made under the Act. They read :

> Sec. 68-D : (1) Any person affected by the scheme published under s. 68-C may, within thirty days from the date of the publication of the scheme in the Official Gazette, file objections thereto before the State Government. (2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify the scheme.
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> (3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall

> thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route.

Provided that no such scheme which relates to any inter- State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with previous approval of the Central Government.

Rule 8 : Filing of objections (procedure) Any person, concern or authority aggrieved by the scheme published under s. 68-C may, within the specified period, file before the Secretary to Government in charge of Transport Department, objections and representations in writing setting forth concisely the reasons in support thereof Rule 9 : Conditions for submission of objections No representation or objection in respect of any scheme published in the Official Gazette shall be considered by the Government unless it is made in accordance with rule 8. Rule 10 : Consideration of scheme (Procedure regarding) :-

> After the receipt of the objections referred to above, the Government may, after fixing the date, time and place for holding an enquiry and after giving if they so desire, at least seven clear days' notice of such time and place to the persons who filed objections under rule 8, proceed to consider the objections and pass such orders as they may deem fit after giving an Opportunity to the person of,being heard in person or through authorised representatives."

> Under the section, the procedure prescribed for the approval of a scheme may be summarized thus : The State Transport Undertaking prepares a scheme providing for road transport service in relation to an area, to be run or operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons, and publishes it in the Official Gazette. Any person affected by the scheme may, within thirty days from the date of its publication, file before the Secretary to Government in charge of Transport Department objections and representations in writing with reasons in support thereof. After receiving the objections and representations, the Government fixes a date for the hearing and after giving an opportunity to the persons of being heard in person or by authorized representatives, considers the objections and then modifies or approves of the scheme.

> The following procedure was in fact followed by the Government in this case: After the scheme was prepared and published in the Official Gazette, the petitioners and others filed objections before the Secretary to Government Transport Department, within the time prescribed. 138 objections were received and individual notices were issued by the Government by registered post to all. the objectors fixing the date of the hearing for December 26, 1957. The Secretary to Government, Home Department, in charge of Transport, heard the representations made by the objectors, some in person and others through their advocates, and also the representation is made by the General Manager of the Road Transport Undertaking. The Secretary, after hearing the objections, prepared notes and placed the entire matter, with his notes,

before the Chief Minister, who considered the matter and passed orders rejecting the objections and approving the scheme; and the approved scheme was thereafter issued in the name of the Governor.

On the aforesaid facts, the first contention raised is that the State Government in approving the scheme was discharging a quasi-judicial act and therefore the Government should have given a personal hearing to the objectors instead of entrusting that duty to its Secretary. Secondly, it is stated that a judicial hearing implies that the same -person hears and gives the decision. But in this case the hearing is given by the Secretary and the decision by the Chief Minister. Thirdly, it is contended on the same hypothesis, that even if the hearing given by the Secretary be deemed to be a hearing given by the State Government, the hearing is vitiated by the fact that the Secretary who gave the hearing is the Secretary in charge of the Transport Department. The Transport Department, it is stated, in effect was made the judge of its own cause, and this offends one of the fundamental principles of judicial procedure. Lastly, it was pointed out that though the enquiry was posted for hearing on December 26, 1957, even before the enquiry was commenced, the Chief Secretary to the Government gave an interview to the 'Deccan Chronicle' and the I Golconda Patrika' to the effect that the Government bad already taken a decision to nationalize the road transport in Krishna District and some routes had been chosen, including the Guntur-Vijayawada route, thereby indicating that the Government has prejudged the case before holding the enquiry. The learned Attorney General counters the said argument by stating that the State Government strictly followed the procedure prescribed under s. 68-C of the Act, that the said Government, being an impersonal body, (gave the hearing through the machinery prescribed by law, that the said Government was discharging only an administrative act and not a judicial act in the matter of approving the scheme, that even if it did perform a judicial act, the Home Secretary in charge of Transport Department had only collected the material and the final orders were made only by the Chief Minister and that the Secretary's press interview was nothing more than a mere indication of the factum of the proposed scheme.

At the outset it would be convenient to consider the question whether the State Government acts quasijudicially in discharging its functions under s. 68-C of the Act. The criteria to ascertain whether a particular act is a judicial act or an administrative one, have been laid down with clarity by Lord Justice Atkin 'in Rex v. Electricity Commissioners, Ex Parte London Electricity Joint Committee Co. (1) elaborated by Lord Justice Scrutton in Rex v. London County Council, Ex Parte Entertainments Protection Association Ltd. (2) and authoritatively re-stated by this Court in Province of Bombay v. Khusaldas S. Advani (3) . They laid down the following conditions: (a) the body of persons must have legal authority; (b) the authority should be given to determine questions affecting the rights of subjects and (c) they should have a duty to act judicially. In the last of the cases cited supra, Das, J., as he then was, analysed the scope of the third condition thus at page 725:

> " (i) that if a statute empowers an authority not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
>
> (ii)that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to the act and the subject opposing it, the final determination of the authority will yet be a quasi. judicial act provided the authority is required by the statute to act judicially."

In the case In re Banwarilal Roy (4) Das, J., as he then was, said much to the same effect at page 800:

> " A judicial or quasi-judicial act, on the other hand, implies more than mere application of the mind (1) [1924] 1 K.B. 171.
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> (3) [1950] S.C.R. 621.
>
> (2) [1931] 2 K.B. 215.
>
> (4) [1944] 48 C.W.N. 766.

or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies a proposal and an opposition' and a decision on the issue. It vaguely connotes 'hearing evidence and opposition' as Scrutton, L. J., expressed it. The degree of formality of the procedure as to receiving or hearing evidence may be more or less according to the requirements of the particular statute, but there is an indefinable yet an appreciable difference between the method of doing an administrative or executive act and a judicial or quasi-judicial act." This statement is practically in accord with the first proposition extracted above. This Court again, in Nagendra Nath Bora v. Commissioner of Hills Division (1) in the context of the provisions of Eastern Bengal and Assam Excise Act, 1910 (I of 1910), considered the scope of the concept of 'judicial act'. Sinha, J., who delivered the. judgment of the Court, made the following observations at page 408:

> " Whether or not an administrative body or authority functions as a purely administrative one or in a quasi- judicial capacity, must be determined in each case, on an examination of the relevant statute and the rules framed thereunder."

In Express Newspapers Ltd. v. The Union of India (2) this Court again reviewed the law on the subject to ascertain whether the Wage Board functioning under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) was only discharging administrative functions or quasijudicial functions. Bhagwati, J., made the following observation at page 613:

" If the functions performed by the Wage Board would thus consist of the determination of the issues as between a proposition and an opposition on data and materials gathered by the Board in answers to the questionnaire issued to all parties interested and the evidence led before it, there is no doubt that there would be imported in the proceedings of the Wage Board a duty to act judicially and the functions (1) A.I.R. 1958 S. C. 398.

(2) A.I.R. 1958 S.C. 578.

performed by the Wage Board would be quasi-judicial in character."

The aforesaid three decisions lay down that whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially. Applying the aforesaid test, let us scrutinize the provisions of ss. 68-C and 68-D and the relevant rules made under the Act to ascertain whether under the said provisions the State Government performs a judicial act or an administrative one. Section 68-C may be divided into three parts: (1) The State Transport Undertaking should come to an opinion that it is necessary in public interest that the road transport service in general or any particular. class of such service in relation to any area or route or portion thereof should be run or operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise ; (ii) it forms that opinion for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service; and (iii) after it comes to that opinion, it prepares a scheme giving particulars of the nature of the services proposed to be rendered, area or route proposed to be covered and such other particulars respecting thereto as may be prescribed and causes it to be published in the Official Gazette. The section, therefore, makes a clear distinction between the purpose for which a scheme is framed and the particulars of the scheme. To state it differently, though the purpose is to provide an efficient, adequate, economical and coordinated road transport service in public interest, the scheme proposed may affect individual rights such as the exclusion, complete or partial, of other persons or otherwise, from the business in any particular route or routes. Under s. 68-C, therefore, the State Transport Undertaking may propose a scheme affecting the proprietary rights of individual permit-holders doing transport business in a particular route or routes.. The said proposal threatens the proprietary right of that individual or individuals. Under s. 68-D read with Rules 8 and 10 made under the Act, any person affected by the aforesaid proposed, scheme may file objections within the -prescribed time before the Secretary of the Transport' Department. Under the said provisions,. the State Government is enjoined to approve or modify the scheme after holding an enquiry and after giving an opportunity to the objectors or their representatives and the representatives of the State Transport Undertaking to be heard in the matter in person or through authorised representatives. Therefore, the, proceeding prescribed is closely approximated to that obtaining in courts of justice. There are two parties to the dispute. The State Transport Undertaking, which is a statutory authority under the Act, threatens to infringe the rights of a, citizen. The citizen may object to the scheme on public grounds or on personal grounds. He may oppose the scheme, on the ground that it is not in the interest of the public or on the ground

that the route which he is exploiting should be excluded from the scheme for various reasons., There is, therefore, a proposal and an opposition and the third party, the State Government is to decide that lis and prima facie it must do so judicially. The position is put beyond any doubt by the provision in the Act and the Rules which expressly require that the State Government must decide the dispute according to the procedure prescribed by the Act and the Rules framed thereunder, viz., after considering the objections and after hearing. both the parties. It therefore appears to us that this is an obvious case where the Act imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme proposed by the Transport Undertaking.

The learned Attorney General argues that ss. 68-C and 68-D do not contemplate the enquiry in regard to the rights of any parties, that the scheme proposed is only for the purpose of an efficient, adequate, economical and properly coordinated bus transport service and should relate only to that purpose and that, therefore, the enquiry contemplated under s. 68-D, though assimilated to a judicial procedure, does not make the approval of the scheme any the less an administrative act. To put it shortly, his contention is that the Government is discharging only an administrative duty in approving the scheme in public interest and no rights of the parties are involved in the process. There is some plausibility and attraction in the argument, but we cannot accept either the premises or the conclusions. The scheme proposed may exclude persons, who have proprietary rights in a route or routes. As we have pointed out, the purpose must be distinguished from the particulars in the scheme. The scheme propounded may exclude persons from a route or routes and the affected party is given a remedy to apply to the Government and the Government is enjoined to decide the dispute between the contesting parties. The statute clearly, therefore, imposes a duty upon the Government to act judicially. Even if the grounds of attack against the scheme are confined only to the purpose mentioned in s. 68-C-we cannot agree with this contention-the position will not be different, for, even in that case there is a dispute between the State Transport Undertaking and the person excluded in respect of the scheme, though the objections are limited to the purpose of the scheme. In either view the said two provisions, ss. 68- C and 68-D, comply with the three criteria of a judicial act laid down by this Court.

Support is sought to be drawn for this contention from the decision of the House of Lords in Franklin v. Minister of Town and Country Planning (1). As strong reliance is placed on this decision, it is necessary to consider the same in some detail. The facts of that case are: On August 3, 1946, the respondent, Lewis Silkin, as Minister of Town and Country Planning, prepared the draft Stevenage New Town (Designation) Order, 1946, under para. 1 of Schedule 1 to the New (1) [1948] A.C. 87.

Towns Act, 1946, and on or about August 6, 1946, he caused the same to be published and notices to be given as prescribed by paragraph 2 of Schedule I to the Act. Thereafter objections were received from a number of persons, including the appellants. Accordingly, the respondent instructed Mr. Arnold Morris, an Inspector of the Ministry of Town and Country Planning, to hold a public local inquiry as prescribed by paragraph 3 of the said Schedule. Mr. Morris held the inquiry at the Town Hall, Stevenage, on October 7 and 8, 1946, and on October 25, made a report to the respondent in which he set out a summary of the sub. missions made and the evidence given by and on behalf of the objectors and attached thereto a complete transcript of the proceedings, which began with an opening statement by Mr. Morris giving a brief recapitulation of the reasons that had led to the

designation of Stevenage as the site of a New Town. On November 11, 1946, the respondent made the order in terms of paragraph 4 of Schedule I to the Act. The appellants applied to the High Court to have the order quashed.. It was contended, inter alia, that the said order was not within the powers of the New Towns Act, 1946, or alternatively, that the requirements of the said Act have not been complied with; that the Minister who made the order had stated, before the Bill was made into law, that he would make the said order, and therefore he was biassed in any consideration of the said objections. The House of Lords held that the respondent's functions under the Act were only administrative and that he had complied with the provisions of the statute. In that view, the order of the Court of Appeal dismissing the applications filed by the appellants was confirmed. Lord Thankerton in his speech at page 102, observed thus:

> "In my opinion, no judicial, or quasi-judicial, pinion, no duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case. The respondent's duties under s. 1 of the Act and sch. 1 thereto are, in my opinion, purely administrative, but the Act prescribes certain methods of or steps in, discharge of that duty..... it seems clear also, that the purpose of inviting objections, and, where they are not Withdrawn I of having a public inquiry, to be held by someone other than the respondent, to whom that person reports, was for the further information of the respondent in order to the final consideration of the Soundness of the scheme' of the designation..... I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties, and that the only question is whether he has complied With the Statutory directions to appoint a person to hold the public inquiry, and to consider that person's report.
>
> At first sight the facts of this case may appear to have some analogy to those in the present case, but on "a deeper scrutiny of the facts and the provisions of the New Towns Act, 1946, and Chapter IV-A of the Act, they disclose essential differences in fundamentals. Under the New Towns Act, 1946, the following steps for developing a new town have been laid down: (1) It is left to the Minister's Subjective satisfaction, after consulting local authorities, who appear to him to be concerned, to make an order designating. a particular area as the site of the proposed new town ; (2) when he proposes to make an order, he prepares a draft of that order giving the necessary parti- culars and publishes it in the London Gazette calling for objections to the, proposed order within a prescribed time; (3) if any objection is made to the proposed order, he shall cause a public local enquiry to be held and shall consider the report of the person by whom the enquiry was held; and (4) any person desiring to challenge the validity of that order may apply to the High Court and he can get that order set aside only if he satisfies the Court that the order is not within the powers of that Act or that his interests have been substantially prejudiced by any requirements of that Act not having been complied with. The steps to be taken for nationalising the Road Transport under the Act are as follows: (1) The State Transport Undertaking, which is a statutory authority under the Act, proposes a scheme; (2) the scheme may provide that the road transport services should -be run or operated by the State Transport Undertaking to the exclusion of a person or persons; (3) any Person, affected may file

> objections before the Government;(4) the Government following the rules of judicial procedure decides the dispute between the Undertaking and -the person or persons affected; (5)the dispute is not necessarily confined only to the question-

whether the 'statutory requirements have been complied with, but may also relate to the question whether a particular person or persons should not. be excluded; and (6) a personal hearing should be given to both the parties by the Government..

A comparison of the procedural steps under both the Acts brings out in bold relief the nature of the enquiries contemplated under the two statutes. There, there is no lis, no personal hearing and even the public enquiry contemplated by a third party is presumably confined to the question of statutory requirements, or at any rate was for eliciting further information for the Minister. Here, there is a clear dispute between the two parties. The dispute comprehends not only objections raised on public grounds, but also in vindication of private rights and-it is required to be decided by the State Government after giving a personal' hearing and following the rules of judicial procedure. Though there may be some justification for holding, on the facts of the case before the House of Lords that that Act did not contemplate a judicial act-on that question we do not propose to express our opinion-there is absolutely none for holding in the present case that the Government is not performing a judicial act. Robson in 'Justice and Administrative Law', commenting upon the aforesaid decision, makes the following observation at page 533:

> " It should have been obvious from a cursory glance at the New Towns Act that the rules of natural justice could not apply to the Minister's action in making an order, for the simple reason that the initiative lies wholly with him. His role is not to consider whether an order made by a local authority should be confirmed, nor does he have to determine a controversy between a, public authority and private interests.
>
> The responsibility of seeing that the intention of Parliament is carried out is placed on him."

The aforesaid observations explain the principle underlying that decision and that principle cannot have any application to the facts of this case. In I Principles of Administrative Law by Griffith and Street, the following comment is found on the aforesaid decision : After considering the provisions of s. 1 of the New Towns Act, 1946, the authors say-

> " Like the town-planning legislation, this differs from the Housing Acts in that the Minister is a party throughout. Further, the Minister is not statutorily required to consider the objections. It is obvious, as the statute itself states, that the creation of new towns is of national interest."

At page 176, the authors proceed to state:

> Lord Thankerton did not analyse the meanings of I judicial' and I administrative nor did he specify the particular factors which motivated his classification. It is

> permissible to conclude that he looked at the Act as a whole, applying a theory of interpretation similar to the rule in Heydon's Case (1584, 3 Co. Rep. 7a, 7b)." At page 178, they conclude thus:
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> " It is submitted, however, that the thoroughness with which the Courts analysed the statutes in the Errington, Robinson, Johnson and Franklin Cases and the emphasis which they have placed on the fact that their decisions have been based solely on the statute under consideration makes such an approach inevitable."

It is therefore clear that Franklin's Case is based upon the interpretation of the provisions of that Act and particularly on the ground that the object of the enquiry is to further inform the mind of the Minister and not to consider any issue between the Minister and the objectors. The decision in that case is not of any help to decide the present case, which turns upon the construction of the provisions of the Act. For the aforesaid reasons, we hold that the State Government's order under s. 68-D is a judicial act.

The next question is whether the State Government disposed of the objections of the petitioners judicially in the manner prescribed by the Act. It is said that under the Act and rules framed thereunder, the State Government should hear the dispute, but in this case the Secretary in charge of the Transport Department, who is not the State Government, gave the hearing. The State Government is an impersonal body and it can only function through the machinery and in the manner prescribed by law. Clause (60) of s. 2 of the General Clauses Act, 1897, defines I State Government' as respects anything done or to be done after the commencement of the Constitution (VII Amendment) Act, 1956, to mean, in a State, the Governor, and in a Union Territory, the Central Government. Under Art. 154(1) of the Constitution, I the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution'. Article 163 enacts that ' there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions

-or any of them in his discretion'. Article 166(1) enjoins that I all executive action of the Government of a State shall be expressed to be taken in the name of the Governor'. Sub-clause (2) of that Article says that 'orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor'. And under sub-cl. (3), 'the Governor shall make rules for tile more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion '. In exercise of the powers conferred by cls. (2) and (3) of Art. 166 of the Constitution, the Government of Madras made rules styled as 'The Madras Government Business Rules and Secretariat Instructions'. Rule 9 thereof prescribes that without prejudice to the provisions of r. 7, the Minister in charge of a. department shall be primarily responsible for,the disposal of the business appertaining to that department. Rule 21 enacts that except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases

in the department. Copies of such standing orders shall be sent to the Governor and the Chief Minister. Rule 11 says that I all orders or instruments made or executed by or on behalf of the Government of the State shall be expressed to be made or executed in the name of the Governor'. Under r. 12, every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a draftsman, a Deputy Secretary, an, Under Secretary or an Assistant Secretary to the Government of the State or such other officers as may be specially empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument'.

After the formation of the Andhra State on, October 3, 1953, the rules made by the Governor of Madras, under the provisions of the States Reorganization Act, Continue to be the rules of the Andhra State till they are amended in accordance with', such law. The Governor of Andhra State, in exercise of the powers conferred by cls. (2) and (3) of Art. 166 of the Constitution directed that until other provisions are made in this regard, 'the business of the Government of Andhra be transacted in accordance with the Madras Government Business Rules. and Secretariat Instructions in force on the first day of October, 1953'. On October 26, 1956, after the formation of the Andhra Pradesh State, as the Andhra Pradesh was not a new State but a continuation of the Andhra State, though there is change, in its name, the business rules of the Andhra state continue to govern the Secretariat of the AndhraPradesh Government. The effect of the aforesaid provisions may be stated thus: A State Government means the Governor; the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions; the Governor made rules enabling the Minister in charge of particular department to dispose of cases before him and also authorizing him, by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the department. Pursuant to the rule, the record discloses, the Chief Minister, who was in charge of Transport, had made an order directing the Secretary to Government, Home Department, to hear the objections filed against the scheme proposed by the State Transport Autho- rity.

The aforesaid machinery evolved by the rules for the disposal of cases by the State Government has been followed in this case. The petitioners and others filed objections to the proposed scheme before the Secretary to the Government Transport Department. He gave a personal hearing to the parties-some of them appeared in person and others by representatives; the entire material recorded by him was placed before the Chief Minister in charge of Transport, who made his order approving the scheme; and the order was issued in the name of the Governor, authenticated by the Secretary in charge of the Transport Department. It may therefore be said that the State Government gave the hearing to the petitioners in the manner prescribed by the rules made by the Governor.

At this state, the argument hinted at but not seriously pressed, may be noticed. The Rules the Governor is authorised to make, the argument proceeds, are only to regulate the acts of the Governor or his subordinates in discharge of the executive power of the State Government, and therefore will not govern the quasi-judicial functions entrusted to it. There is a fallacy in this argument. The concept of a quasijudicial act implies that the act is not wholly judicial;

it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided those 'Rules conform to the principles of judicial procedure.

The mode of performing quasi-judicial acts by administrative tribunals has been the subject of judicial decisions in England as well as in India. The House of Lords in Local Government Board v. Arlidge (1) in the context of the Housing, Town Planning Etc., Act, 1909, made the following observations at page 132:

> " My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same."

In New Prakash Transport Co., Ltd. v. New Swarna Transport Co., Ltd. (2) this Court reviewed the case law on the subject and came to the conclusion that the rules of natural,-justice vary with varying constitutions of statutory bodies, and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act. This Court re-affirmed the principle in Nagendra Nath Bora v. Commissioner of Hills Division (supra) (3). With this background we shall proceed to consider the validity of the three alleged deviations of the State Government from the fundamental judicial procedure. In the present case, the officer who received (1) [1915] A.C. 120. (2) A.I.R. 1958 S.C. 398. (3) A.I.R. 1958 S.C. 398.

the objections of the parties and heard them personally or through their representatives, was the Secretary of the Transport Department. Under the 'Madras Government Business Rules and Secretariat Instructions' made by the Governor under Art. 166 of the Constitution, the Secretary of a department is its head. One of the parties to the dispute before the State Government was the Transport Department functioning as a statutory authority under the Act. The head of that department received the objections, heard the parties, recorded the entire proceedings and presumably discussed the matter with the Chief Minister before the latter approved the scheme. Though the formal orders were made by the Chief Minister, in effect and substance, the enquiry was conducted and personal hearing was given by one of the parties to the dispute itself. It is one of the fundamental principles of judicial procedure that the person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter. In Ranger v. Great Western Ry. Co.(1) Lord Cranworth, L.C., says:

> 'A judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias inducing him to lean to the one side rather than to the other In ordinary cases it is just ground of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the

> strongest proof that he cannot be indifferent." In Rex v. Sussex Justices Ex Parte McCarthy (2) Lord Hewart, C. J., observed:
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> " It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance (1) [1854] 5 H.L.C. 72, 89; 10 E.R. 824, 827. (2) [1924] 1 K.B. 256, 258.

but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspects as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done, but upon what might appear to be done."

This was followed in Rex v. Essex Justices Ex Parte Perkins(1).In Franklin's Case (2), though on a construction of the provisions of that Act under consideration in that case it was held that the Minister was not acting judicially in discharging his duties, his Lordship accepted the aforesaid principle and expressd his view on the doctrine of 'bias' thus, at page 103:

> " My Lords, I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is on the principle that (1) [1927] 2 K.B. 475.

(2) [1948] A.C. 87.

justice should riot only be done, but should manifestly and undoubtedly be seen to be done. The hearing given by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given, in violation of that principle, are bad. The second objection is that while the Act and the' Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the

Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party- appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure. The learned counsel further contends that the mind of the State Government was foreclosed before the hearing was given and therefore no real enquiry was held by it as contemplated by the Act. This argument is based upon the reports published on 27-12-1957 in the 'Deccan Chronicle' and 'Golconda Patrika'. Therein it was stated under date December, 26, as follows :

> " The Chief Secretary, Mr. M. P. Pai, told pressmen today that the Government has already taken a decision to nationalize the road transport in Krishna District and some routes had been chosen. The Guntur-Vijayawada route also comes under the nationalisation scheme. About 65 buses would be plying oil these routes."

The Chief Secretary was giving this information on December 6, 1957, even before the enquiry was commenced. On the basis of this publication, it is contended, that the Government had already taken a decision to nationalize the road transport before the scheme was approved by the Government and that the entire procedure was put through to implement the decision already taken to meet the requirements of the technicalities of law. In the counter-affidavit filed by the first respondent it is stated that the scheme was published in the Andhra Pradesh Gazette dated 24-12-1957 and that the alleged statement only referred to the said proposal under s. 68-C of the Motor Vehicles Act. Though the wording of the information published speaks of the decision of the Government, the Chief Secretary obviously must have been referring to the contents of the notification published two days earlier, on 24-12-1957. We cannot from this publication in the newspapers come to the conclusion that the Government having finally decided to reject all possible objections, went through a farce of an enquiry. We therefore hold, for the first two reasons, that the quasi-judicial enquiry held by the State Government was vitiated by the, violation of the aforesaid fundamental principles of natural justice. The last argument of the learned counsel for the petitioners is that the Road Transport Corporation, i.e., the first respondent, cannot implement the scheme proposed by the defunct State Transport Undertaking. Some of the relevant facts are as follows The State Transport Undertaking published the scheme in the Andhra Pradesh Gazette dated November 14, 1957. It also appeared through its representative, the General Manager, who made his representation to the Secretary of the Transport Department on 26-12-1957. The State Government approved of the scheme on 7-1-1958 and the approved scheme was published in the Andhra Pradesh Gazette dated 9-1-1958 and it was directed to come into force with effect from 10-1-1958. The Government of Andhra Pradesh established a Road Transport Corporation under the Road Transport Corporations Act, 1950 (Act LXIV of 1950), for the State of Andhra Pradesh, with effect from 11

- 1- 1958. The State Government transferred the business of the Road Transport Department to the said Corporation for management. Thereafter, the said Corporation was taking subsequent steps to

implement the scheme.

The argument is that the Road Transport Corporation has no power under the Road Transport Corporations Act to take over the business of the State Transport Undertaking and to implement the scheme initiated by that Undertaking. The said Corporation admittedly comes under the definition of 'State Transport, Authority' under the Act. But the question is whether-' the said Corporation is also a successor to the State Transport Authority that initiated the scheme. It would certainly be the successor if the Corporation was legally entrusted with the duty of carrying on the business the Road Transport Department was doing before. On January 9, 1958, in exercise of the powers conferred by s. 3 of the Road Transport Corporations Act, 1950, the Governor of Andhra Pradesh established with effect from January 11, 1958, a Road Transport Corporation called the Andhra Pradesh Road Transport Corporation for the State of Andhra Pradesh. In exercise of the power conferred by s. 34 of the Road Transport Corporations Act, 1950, the Governor of Andhra Pradesh made an order dated 11th January, 1958, for the following administrative arrangements to come into force "(I) The Andhra Pradesh Road Transport Corporation (hereinafter referred to as the Corporation) shall take over the management of the existing Road Transport Department of the Government of Andhra Pradesh.

(2)All land and all stores, articles and other goods of the Road Transport Department shall pass to the Corporation. (3) (a) Subject to the provisions of sub-paragraphs (b)and

(c), all the assets and liabilities of the Road Transport Department shall pass to the Corporation... The other clauses need not be read as they are only consequential to the aforesaid clauses. It is therefore clear from the said order that the Government entrusted the management of the Road Transport Department to the Road Transport Corporation and directed the transfer of all assets and liabilities to the said Corporation. The effect of the said order is that the State Corporation carries on the Road Transport business in the place of the State Transport Department which was functioning as the State Transport Undertaking under the Act before the said order. If there was no legal impediment in the Government transferring the business carried on by one of its departments and its assets to the Corporation, the Corporation would be a successor to the pre-existing State Transport Undertaking. The petitioners contest the position that the Government has any such power under s. 34 of the Road Transport Corporations. Act, 1950. Section 34 reads:

> "(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment,, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits and stocks.
>
> (2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under subsection (1) except with the previous permission of the State Government."

The Road Transport Corporation Was constituted for extending and improving the facilities of the road transport in the Andhra Pradesh area. The Government transferred the Undertaking and its assets to that Corporation and gave it directions under s. 34 of the Road Transport Corporations Act, 1950, to take over the management of the said undertaking.The fact that under the Road Transport Corpora- tions Act the Corporation can acquire an undertaking after paying compensation is not of much relevancy for, in this case, the Corporation does not purport to acquire any transport undertaking of the petitioners. It has not been brought to our notice that the said direction is inconsistent with any of the provisions of the Road Transport Corporations Act, 1950. We, therefore, hold that the first respondent is the successor to the State Transport Undertaking which proposed the scheme and as admittedly it satisfied the requirements of the definition of I Road Transport Authority' under the Act, it is within its rights in implementing the scheme approved by the Government. In the result, for the reason that the State Government did not make the enquiry consistent with the principles of natural justice in approving the scheme, the order approving the scheme is hereby quashed and a direction issued to the first respondent to forbear from taking over any of the routes in which the petitioners are engaged in transport business. This judgment will not preclude the State Government from making the necessary enquiry in regard to the objections filed by the petitioners in accordance with law. The petitioners will have liberty to file additional objections if any. As the petitioners have failed on substantive points in the case, the parties are directed to bear their own costs.

WANCHOO, J.-This petition under Article 32 of the Constitution challenges the scheme of road transport introduced in the Krishna district of Andhra Pradesh. The petitioners raise two main contentions, namely, (1) that the provisions of Chapter IV-A of the Motor Vehicles Act, 1939, violate their fundamental rights guaranteed under the Constitution, and (2) that the scheme introduced is ultra vires Chapter IV-A. I have had the advantage of reading the judgment prepared by my brother Subba Rao, J. I agree with what he has said on the first contention and therefore do not propose to repeat the facts and the reasons given by him. I have, however, been unable, with utmost respect, to persuade myself to agree fully with what has been said on the second contention. I, therefore, proceed to deal with that only. The second contention of the petitioners is that the scheme of road transport, which is sought to -be put into effect, is ultra vires Chapter IV-A of the Motor Vehicles Act, (IV of 1939), (hereinafter called the Act), inasmuch as the provisions of that Chapter have not been strictly followed. Before I deal with the contentions of the petitioners in this matter, I may indicate briefly the steps required to be taken before a scheme of road transport is finalised under Chapter IV-A of the Act. The first step is the preparation of the Scheme under s. 68C, which lays down that where any -State Transport Undertaking 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 Transport Undertaking may prepare a scheme for the purpose. After the scheme is prepared, it has to be published in the Official Gazette and also in such other manner as the State Government may direct. The next step is that any person affected by the scheme published under s. 68C may, within thirty days from the date of publication, file objections thereto before the State Government; [s. 68D(l)]. The third step is that the State Government has to consider the objections and after giving

an opportunity to the objectors or their representatives and the representatives of the State Transport Undertaking to be heard in the matter, to approve or modify the scheme; (s. 68D (2)). Finally, the scheme as approved or modified is published in the Official Gazette as the approved scheme; (s. 68D(3)). Then comes the provisions for putting. this approved scheme into effect. Section 68F provides that the Regional Transport Authority shall thereupon issue permits to the State Transport Undertaking on its application in pursuance of the approved scheme. The Regional Transport Authority is also given power to cancel or modify any existing permit or refuse to renew any existing permit for this purpose. Section 68G provides for compensation where any existing permit is cancelled or its terms are modified. The main attack of the petitioners is that sections 68C and 68D were not complied with. The particulars of the attack may be summarised as below:-

> (1) There was no State Transport Undertaking in existence which could have published the scheme (68C) (2) Even if a State Transport Undertaking was there, it did not form an opinion as required by s. 68C and in particular, the General Manager, who acted for the State Transport Undertaking, had no authority to do so;
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> (3)S. 68D(2) contemplates a hearing by the State Government of the objections filed. There was no such hearing, as the Home Secretary in-charge of Transport Department, who heard the objectors must be deemed to be one of the parties who have to be heard by the State Government, and in any case, the hearing by the Secretary was no hearing by the State Government.
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> (4)There was no real bearing at all and no genuine consideration of the objections by the State Government as the issue bad already been prejudged, (vide speech of the Chief Secretary on the 26th of December, 1957); and (5)The scheme could not be enforced by the Road Transport Corporation, which replaced the Road Transport Department soon after the scheme had been approved by the State Government.

It is necessary in order to appreciate and decide the point raised on behalf of the petitioners to mention briefly the facts relating to the preparation of the scheme and subsequent steps taken for its approval and enforcement. The scheme was published on November 14, 1957, under the authority of Shri Guru Pershad, General Manager of the State Transport Undertaking Andhra Pradesh Road Transport. Chap- ter IV-A of the Act had come into force from the 15th of February, 1957. Before that Hyderabad State, as it then was, had passed Act XLV of 1956, amending the Motor Vehicles Act locally and incorporating in it provisions similar to the present Chapter IV-A. Under the Hyderabad Act, the State Transport Undertaking was defined as the Road Transport Department of the State providing road transport services. When the Hyderabad State came to end and what was known as the Telengana area of that State was merged in the State of Andhra Pradesh, the Road Transport Department of Andhra Pradesh took over the road transport services in the Telengana area which were being run by the former Hyderabad State. The present scheme was published, as already stated, on the 14th of November, 1957, by Shri Guru Pershad on behalf of the Road Transport Department of Andhra Pradesh. The objections to the scheme were received by the Secretary to Government in charge of the Road Transport Department, and the objectors were heard by the Home Secretary in charge of the Transport Department on the 26th and 27th of December, 1957.

The scheme was finally approved by the Governor of Andhra Pradesh on the 7th of January, 1958, and was to come into force from the 10th of January, 1958. The approved scheme was published in the Gazette on January 9, 1958. In the meantime, the Government of Andhra Pradesh decided to establish a Road Transport Corporation under the Road Transport Corporations Act, No. LXIV of 1950, for the State of Andhra Pradesh. This decision was published on the 20th of December, 1957, and the Road Transport Corporation was to come in existence from the 11th of January, 1958. It was to take over the business of the Road Transport Department of the State. The members of the Road Transport Corporation were appointed on the 9th of January, 1958, and the Corporation was established with effect from the 11th of January, 1958. It was this Corporation, which took over the duty of implementing the approved scheme, which was published on the 9th of January, 1958, and was to come into effect from the 10th of January, 1958. The steps necessary under sections 68F, 68G and 68H of the Act to put the scheme into force were taken by this Corporation.

Re. (1). The argument of the petitioners under this head is put thus: There was a State Transport Undertaking under Hyderabad Act, which was operating in the present Telengana area of Andhra Pradesh. This was the Road Transport Department of the Hyderabad State, which became the statutory body under the Hyderabad Act. When, however, the Hyderabad State came to end and the Telengana area was merged in Andhra Pradesh on the 1st of November, 1956, the State Transport Undertaking of the Hyderabad State continued to function as such for the Telengana area of Andhra Pradesh. There was no extension of the Hyderabad Act to the rest of Andhra Pradesh, and the present scheme relates to Krishna District which is not in the Telengana area; consequently, it was not open to the State Transport Undertaking which was existing under the Hyderabad Act to frame this scheme for an area which was not in Telengana. It was also urged that no State Transport Undertaking was formed as such after the coming into force of Chapter IV-A of the Act in February, 1957. I am of the opinion that there is no force in this argument. It is true that tinder the Hyderabad Act, the State Transport Undertaking was defined as " the Road Transport Department of the State providing road transport service ". When Hyderabad State came to end on the 1st of November, 1956, the Road Transport Department of Andhra Pradesh became the State Transport Undertaking within the meaning of the Hyderabad Act, though, as that Act was in force only in the Telengana area, road transport services could only be run in that area. When, however, Chapter IV-A of the Act came into force from the 15th of February, 1957, and applied to the whole of the State of Andhra Pradesh, the Hyderabad Act must be deemed to have been repealed by necessary implication, as Chapter IV-A of the Act covered exactly the same field as was covered by the Hyderabad Act. On the 15th of February, 1957, there was only Road Transport Department of Andhra Pradesh, which was in existence and which was providing transport services in certain areas of the State. Now, under s. 68A, a State transport undertaking is defined as any undertaking providing road transport service, where such undertaking is carried on by the Central Government or the State Government..." The Road Transport Department of Andhra Pradesh was obviously an undertaking providing road transport service though only in a part of the State, and was carried on by the State Government of Andhra Pradesh. Therefore, the Road Transport Department of Andhra Pradesh became the State Transport Undertaking under the definition in Is. 68A. The fact that this undertaking which came in existence by virtue of the definition on the 15th of February, 1957, was at that time providing road transport services only in a part of the State, would not make it any the less a State Transport Undertaking within the meaning of that term and there is nothing in Chapter.IV-A, which precludes

a State Transport Undertaking, which is for the time being providing transport services in a part of the State, from extending its activities and framing a scheme for other parts of the State. I am, therefore, of opinion that a State Transport Undertaking was in existence in November, 1957, when the scheme was prepared and published, and it was the Road Transport Department of Andhra Pradesh. Re. (2). The contentions on this head are two-fold. In the first place, it is urged that the General Manager, who acted for the State Transport Undertaking had no authority to do so on its behalf This is a question of fact and should have been specifically raised in the petition. All that, however, is said about the authority of Shri Guru Pershad is to be found in paragraph 11 (e) of the petition in these words:

> "Mr. Guru Pershad was the General Manager of the Road Transport Department of the erstwhile Hyderabad State. He was never appointed as Manager of the State Transport Undertaking of Andhra Pradesh, and therefore, he has no legal authority whatever to publish a scheme ".

Now, it is obvious that this objection was only confined to one point, namely, that Shri Guru Pershad had no authority to act for the State Transport Undertaking of Andhra Pradesh, as he was -never appointed as manager of that undertaking. It was not the case of the petitioners that even if he had been appointed as Manager of the Andhra Pradesh State Transport Undertaking, he would have no authority to frame and publish a scheme on behalf of that undertaking. It appears that Shri Guru Pershad, who was the Manager of the road transport services when they were run by the former Hyderabad State, continued to be such after the Telengana area of the Hyderabad State was merged in Andhra Pradesh. It is unthinkable that Shri Guru Pershad should have issued a notification in the Gazette on the 14th of November, 1957, styling himself as " General Manager, State Transport Undertaking, Andhra Pradesh Road Transport ", if he was not in fact the General Manager of the Andhra Pradesh Road Transport. It must, therefore, be held that Shri Guru Pershad was the General Manager of the Andhra Pradesh Road Transport, and, therefore, of the State Transport Undertaking. His authority to publish the scheme, if he was the Manager of Andhra Pradesh State Transport Undertaking, has not been attacked. The scheme was published on the 14th of November, 1957, by Shri Guru Pershad as such Manager. The petitioners cannot at this stage be allowed to challenge his authority to do so, when they did not specifically raise this point in their petitions. When, therefore, he prepared and published the scheme, it must be held that he did so on behalf of the State Transport Undertaking. The second part of this contention is that the notification of the 14th November, 1957, does not say that the State Transport Undertaking was of opinion that it was necessary in the public interest that the road transport services should be run and operated by the State Transport Undertaking. The actual words used in the notification are these:-

> "In exercise of the powers conferred by s. 68C of the Motor Vehicles Act, 1939, it is hereby proposed, for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service in public interest, to operate the following transport service as per the particulars given below with effect from a date to be notified by the Government."

No doubt, the words " that the State Transport Undertaking is of opinion " are not expressly to be found in this notification ; but at the same time it is impossible that a proposal like this should be prepared and published on behalf of the State Transport Undertaking without its forming an opinion that it was necessary in the public interest to do so. I am of opinion that the State Transport Undertaking must have formed the opinion necessary under s. 68C before it published its proposal and invited objections to the same. There 175 no exact form of words provided for this purpose, and it would be quite in order to draw the inference from the words used in the notification that it was published after the State Transport Undertaking had formed the opinion necessary under s. 68C. In this connexion, reference may be made to paragraph 2 of the counter-affidavit filed on behalf of the Andhra Pradesh State Road Transport Corporation, where it is said that the General Manager of the Andhra Pradesh Road Transport which was the State Transport Undertaking, was of opinion that the transport services in the Krishna District of Andhra Pradesh should be operated in the public interest by the Andhra Pradesh Road Transport. It was, however, urged on behalf of the petitioners that this only disclosed the opinion of the General Manager and not of the State Transport Undertaking; but, as I have already said above, the authority of the General Manager to speak on behalf of the State Transport Undertaking was never specifically challenged in the petition. There is, therefore, no force in this contention, and it must be rejected.

Re. (3). This contention relates to the hearing by the State Government under s. 68-D(2). In order to determine this question, it is necessary to consider whether the State Government, when it gives a hearing under s. 68-D(2), is acting as a quasi-judicial tribunal or is merely performing administrative functions. If the State Government acts as a quasi-judicial tribunal certain considerations apply to the nature of the hearing granted ; if, on the other hand, the State Government acts administratively, certain other considerations apply in determining the propriety of the hearing in fact given in this case. The contention on behalf of the petitioners is that the hearing contemplated is as a quasi-judicial tribunal. The learned Attorney General, on the other hand, contends that the State Government merely acts administratively when it gives a hearing under this provision. What constitutes a quasi- judicial act has been considered by this Court in Province of Bombay v. Kusaldas S. Advani (1). The principle has been summarised by Das J. (as he then was) at p. 725, in these words:

> The principles, as I apprehend them are:
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> (i)that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
>
> (ii)that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the

authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially." Now, it may be mentioned that the statute is not likely to provide in so many words that the authority (1) [1950] S.C.R. 621.

giving the hearing is required to act judicially; that can only be inferred from the express provisions of the statute. In the present case, it is urged by Mr. Nambiar appearing for the petitioners that there were two parties before the State Government, which was the deciding authority under s. 68D(2), namely, the objectors and the representatives of the State Transport Undertaking. Therefore, according to him, prima facie, there would be a duty to act judicially and there is no other factor which would take away the inference to be deduced from the presence of two parties before the State Government, which has to decide the matter. Whether there is any other factor will, however, depend upon the circumstances of each case, and the nature of the matter under hearing and the scope of the hearing. The learned Attorney General contends that if one looks at the nature of the matter to be heard and considers the scope of the hearing before the State Government in this case the only conclusion possible is that the State Government acts administratively when it gives a hearing under section 68(2).

What then is the nature of the hearing before the State Government ? Article 19(6)(ii) is of help in this connection. It provides that nothing in sub-clause (g) of article 19(1), which deals among other things with the right to carry on trade or business shall prevent the State from making any law relating to the carrying on by the State or by a corporation owned or controlled by the State, of any trade, or business, whether to the exclusion, complete or partial, of citizens or otherwise. Chapter IV-A has been inserted in the Act to carry out this purpose, so that the State may operate transport services to the exclusion, complete or partial, of citizens. The scheme which has been published provides that there will be a complete exclusion of citizens when the scheme is enforced in the area to which it relates. Now, the question is whether the exclusion of citizens as a whole is also an issue to be decided by the State Government when it hears objections. Mr. Nambiar submits that the most important thing for the State Government to decide is whether there should be complete exclusion of citizens on the enforcement of the scheme. The learned Attorney General on the other hand contends that all that the State Government has to do is to see whether the scheme published is in the interest of the public and also whether it will provide an efficient, adequate, economical and properly coordinated road transport service. The argument continues that if the State Government comes to that conclusion, the complete exclusion which the scheme provides ipso facto follows, and the State Government has not to decide the matter of exclusion as a separate issue. In other words, the argument is that the State Government is not to decide between the competing claims of citizens providing transport privately and the State Transport Undertaking providing transport to the exclusion of citizens, and there is, therefore, no real lis in this case. It is also pointed out that objection can not only be filed by the bus operators of that area who are to be excluded but also by anybody who is affected by the scheme, including the members of the travelling public. Giving, my

best consideration to the arguments on either side on this aspect of the matter, I have come to the conclusion that the scope of the hearing before the State Government is of a limited character, though the decision may affect citizens providing transport, the question whether private citizens should or should not be allowed to provide transport is really not a matter in issue before the State Government. What is in dispute before the State Government is only whether the scheme that is proposed by the State Transport Undertaking is an efficient, adequate, economical and properly coordinated scheme for road transport service and whether it is in the interest of the public. If the State Government comes to the conclusion that it is so, a complete exclusion proposed automatically follows and the question of exclusion is not to be determined as a separate issue as between the objectors and the State Transport Undertaking. It is true that the State Government has the right to modify the scheme and in so doing it may drop a part of the scheme; but here again it is not modifying the scheme because of any right of a private citizen to carry on road transport service in a particular area but because it considers that the scheme so far as that particular area is concerned is not efficient, adequate, economical or properly coordinated or in the public interest. Unless it comes to that conclusion with respect to any part of the area. comprised in-the scheme and modifies it, the consequence of complete exclusion ipso facto follows. What I wish to emphasise is that the State Government is not determining whether there should be Statemonopoly or private enterprise when it is considering objections under s. 68D(2); it is only deciding whether the scheme put forward before it is such as can be approved with or without modifications within the four corners of the law laid down under s. 68C. If it comes to that conclusion, the complete or partial exclusion follows. If on the other hand it modifies any part of the scheme, exclusion fails to that extent. Considering, therefore, the nature and the scope of the hearing under s. 68D(2) it seems to me that there is really no lis. Even though there may be two parties before the State Government at the bearing, there is no determination of the rights of the parties before it. The determination is only of the efficiency etc. of the scheme. proposed and whether it is in the public interest. Therefore, it cannot be said that the nature of the hearing in this case makes the State Government a quasi-judicial tribunal and the decision a quasijudicial act within the meaning of the principles laid down in Advani's Case(1). I may in this connexion refer to Franklin v. Minister of Town and Country Planning (2). The facts there were these:

> Under the New Towns Act, 1946, the Minister prepared a draft order for a new town and caused it to be published, and notices were given to the persons affected. Thereafter objections were received from a number of persons who were the owners and occupiers of dwelling-houses and lands in the affected area. The Act provided that on receipt of the objections, an inspector was to hold a public local inquiry into the objections and make a report to (I) [1950] S.C.R. 621.
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> (2) [1948] A.C. 87.

the Minister. Thereupon, the Minister made the order under the Act. These proceedings, as provided by the Act, were taken with respect to a place called Stevenage in 1946 and the Minister passed the necessary order eventually. Some of the owners and occupiers of dwelling-houses and lands situate at Stevenage applied to the Court to have the order quashed, on the ground, among others, that the requirements of the said Act had not been complied with and the interests of the appellants had

been substantially prejudiced. According to them, the New Towns Act, 1946, impliedly required that the objections of the appellants should be fairly and properly considered by the Minister and that the Minister should give fair and proper effect to the result of such consideration in deciding whether the said order should be made and that such implied requirements were not complied with. It was held in that case that the Minister of Town and Country Planning had no judicial or -quasi-judicial duty imposed on him and the procedure followed was according to the requirements of the Act.

Now, substitute in the place of the New Towns Act, 1946, Chapter IV-A of the Act; substitute in the place of the draft order of the Minister, the draft scheme of the State Transport Undertaking ; and substitute in place of the final order, the final approval of the State Government after hearing the objections. It would seem, therefore, that the parallel between the present case and Franklin's case (1) is complete. There a draft order was published, followed by objections and an inquiry and hearing and a final order. Here also a draft scheme is published, followed by objec- tions and hearing, and final approval. There the interest of persons occupying lands and houses in the area proposed to be affected by the order were involved. Here also the interests of the bus-operators at least, if not also of the travelling public, are involved. In spite of that it was held that the Minister had no judicial or quasi-judicial duty imposed on him by the Act, and the reason was that he was merely considering whether the scheme should go through. Once he came to that conclusion after following the procedure (1) [1948] A.C. 87.

provided in the Act, the' effect on those occupying lands and dwelling houses would follow, according to the provisions of the Act. Here also once the State Government decides that the scheme should be approved, the effect would be complete or partial exclusion of the bus operators of that area, as envisaged in the scheme. To my mind, therefore, the present case is parallel to Franklin's case (1) and on a parity of reasoning I would hold that the function of the State Government was administrative when it considered the objections under s. 68D(2) and not quasi- judicial. The only difference that I see between the two cases is that the New Towns Act provided specifically for hearing of the objections by an Inspector and not by the Minister while this is not so in the present case. I shall consider the effect of this later; but this has in my opinion, little, if any, bearing on the question whether the State Government was acting quasi-judicially when deciding objections under s. 68D(2).

I may also in this connexion refer to Nagendra Nath Bora v. Commissioner of Hills Division (2), where it was held by this Court that the question whether or not an administrative body or authority functions as purely administrative or in a quasi-judicial capacity, must be determined in each case on an examination of the relevant statute and rules framed thereunder. Similar was the view expressed by this Court in Express Newspapers Ltd. v. The Union of India (3), when considering the functions performed by a wage Board, and it was observed that whether the wage Board exercised judicial or quasi-judicial functions is to be determined by the relevant provisions of the statute incorporating it and it would be impossible to lay down any universal rule which would help in the determination of this question. Applying, therefore, the principles laid down by this Court in these cases and taking into account the express provisions contained in Chapter IV-A and the Rules framed thereunder, the conclusion at which I arrive is that the hearing under s. 68D(2) was not

before a quasi-judicial tribunal and the decision was not a quasi-judicial act and (I) [1948] A.C. 87. (2) A. I.R. 1958 S.C. 398. (3) A.I.R. 1958 S.C. 878.

the State Government was acting purely administratively. Having reached this decision, let me see what actually happened in this case. The matter pertains to the Road Transport Department which was in charge of the Chief Minister. The Home Secretary works under the Chief Minister and was in charge of the Road Transport Department. The Chief Minister ordered, when the objections were put up before him, that the representation should be heard by the Home Secretary, and thereupon, the Home Secretary heard the objectors and a note of the hearing was placed before the Chief Minister for orders. The Chief Minister then passed the order approving the scheme. The main attack on this kind of hearing is two-fold. It is urged in the first place that rule 10 framed under Chapter IV-A of the Act provides that the objectors will be given an opportunity of being heard in person or through authorised representatives. It is said that in view of this rule it was not open to the Chief Minister to direct the Home Secretary to bear the objections when the decision was to be made by the Chief Minister. It is pointed out that in Franklin's case (1) there was a specific provision that an Inspector will hold an inquiry and hear the objections and make his report, and thereafter the Minister will pass the final order on the report of the Inspector. There is no such specific provision in the Act or the Rules in this case, and, therefore, the hearing by the Home Secretary in these circumstances cannot be said to be a hearing by the State Government or the Chief Minister who had to decide the objections. The learned Attorney General relies in this connexion on the Rules of Business framed under article 166(3) of the Constitution which provides for the making of rules for the more convenient transaction of the business of the Government of the State, a copy of which was shown to us. It is said in paragraph 13(1) of the counter-affidavit that these Rules do not provide for personal hearing; but it is open to the Minister to pass a standing order as he thinks fit for the disposal of business in his Ministry. Consequently, in exercise of this power, the (1) [1948] A.C. 87.

Chief Minister passed an order that the Home Secretary should hear these representations in order to comply with the provision of Chapter IV-A and Rule 10, even though there is no provision in the Rules of Business for oral hearing by the Minister or the Secretary. It is urged by Mr. Nambiar that the order passed by the Chief Minister in this case that the hearing should be given by the Home Secretary was not a standing order but an order in this particular case. That seems to me to be correct ; but the question is whether, when an administrative hearing of this nature is being given under a rule which provides that the State Government should give a hearing to objectors, it is necessary that the Minister who decides must also hear. It seems to me that where the hearing is administrative, it is not essential that the Minister must hear, so long as a hearing is given by an officer of the Government. I may in this connexion refer to article 154 of the Constitution, which provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. This being an ad- ministrative hearing comes within the executive power of the State and there would be no infirmity if the Governor, who in view of the provisions of the General Clauses Act, is the State Government, authorised through the Chief Minister a subordinate officer to give the hearing. Reference in this connection may also be made to Local Government Board v. Arlidge (1), which dealt with the manner of hearing of an appeal by the Local Government Board under the Housing, Town Planning &c., Act, 1909. The following observations of Lord Haldane at p. 132 are

apposite in this context :-

> " In the case of a Court of Law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal (1) [1915] A.C. 120, 132.

in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the local Government Board has the duty of enforcing obligations on the individual which are imposed in the interest of the community. Its, character is that of an organization with, executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently."

These observations show that when one is dealing with a body like the State Government one has to take into account the procedure usually followed by the State Government in matters that come before it. In these circumstances if the Minister ordered, in the absence of specific rules on the point, that the hearing should be by the Secretary, he was, in my opinion, complying with the essential requirement, namely, that there should be an oral hearing by the State Government before the decision of the objections. The bifurcation of the function of hearing from the function of deciding cannot in the circumstances, when the hearing was administrative, be said to be improper or against rule 10, and was necessary in order that the Government may function efficiently. Therefore, I am of opinion that the hearing by the Secretary was sufficient compliance of rule 10, which required a personal hearing before the decision of the objections.

The second ground of attack under this head is that in any case the Home Secretary who was also in charge of the Road Transport Department was not the right person to hear the objections on the ground that the scheme was put forward by his department. Here again the fact that the hearing was of an administrative nature has to be borne in mind. Bearing that in mind and also considering that it was the Chief Minister who finally decided the matter and approved the scheme, it cannot be said that the Home Secretary in charge of the Transport Department was an improper person to give the hearing. After all, the scheme was put forward as a proposal. It was open to approval or modification after hearing the objections. The body which put forward the scheme was the State Transport Undertaking which was a limb of the Government. The Government has in a case of this kind to hear objections against a scheme prepared by one of its own limbs. In these circumstances, if the Head of the Department, namely, the Secretary hears the oral objections on a scheme prepared by some one in that department who would necessarily be under him, like the General Manager of the Road Transport Department, it does not follow that the Secretary is an improper person to give the hearing because he hears his subordinate who put forward the scheme also, along with the objectors. Further, the Secretary in this case is not the deciding authority which is the Chief Minister' He made notes of the hearing and conveyed the arguments to the Chief Minister, and as

the matter was purely administrative, the procedure cannot be said to be improper. I am, therefore, of opinion that the contentions under this head must be rejected.

Re. (4). It is said that there was no real hearing at all and no genuine consideration of the objections as the issue had already been pre-judged, and reliance in this connexion is placed on the statement of the Chief Secretary dated the 26th of December, 1957. It appears that the Chief Secretary said that the Government had already taken a decision to nationalise transport in Krishna District and some routes had been chosen. Learned Attorney General contends that this only refers to the scheme which had already been published on the 14th of November, 1957. Mr. Nambiar on the other hand contends that it goes much further and shows that the Government had already made up their mind to nationalise road transport in Krishna District and therefore the hearing which the State Government gave to the objectors to the scheme was a farce. Now, taking into account what I have said above about the scope of the hearing under s. 68D(2), it would be clear that there was no prejudging of the issue so far as the scheme was concerned. It is true that the Chief Secretary said that there would be nationalisation in Krishna District, which meant of course complete exclusion of the private bus operators;' but I have already said that the scope of the hearing under s. 68D(2) is to consider whether the scheme is efficient, etc., and is in public interest. If the answer is yes, complete exclusion follows. Therefore, when the Chief Secretary said that the Government had decided to nationalise road transport in Krishna District, he was certainly not saying that the Government was wedded to the scheme which was published and to which objections had been invited. The speech merely emphasises the aspect of complete exclusion; but it nowhere says that the scheme which was to bring about the exclusion into effect had already been approved. I may again in this connection refer to Franklin's case (ibid), where also an argument was raised that the Minister was biased so far as any consideration of the draft order was concerned, as he had said in an earlier speech that he would make the said order. It was held that as the Minister had no judicial or quasi-judicial duty imposed on him, consideration of bias in the execution of this duty was irrelevant, the sole question being whether or not he genuinely considered the report and the objections. In the present case also, the sole question was whether the objections to the scheme were genuinely considered. If after genuine consideration they were approved, complete exclusion would follow. Simply because the Chief Secretary said that the Government had decided to nationalise road transport in Krishna District, it did not follow that the Government was not prepared to consider fairly the objections to the scheme on the approval of which nationalisation would follow through complete exclusion. Considering, therefore, that the hearing before the State Government under s. 68D(2) was purely administrative, there is no force in this objection.

Re. (5). It is urged that the scheme was proposed by the Andhra Pradesh Road Transport Department as the State Transport Undertaking within the meaning of s. 68A and was approved while that undertaking was still in existence. But immediately after -the scheme was approved the Undertaking came to an end and the Road Transport Corporation came into existence and that Corporation could not carry out the scheme which had been approved before it came into existence. The argument seems to be that the body which prepared the scheme and got it approved is the body which can enforce it, and as the Road Transport Corporation neither prepared it nor got it approved, it cannot enforce it. I am of opinion that there is no force in this contention. The Road Transport Corporation came into existence oil the 11th of January, 1958. On the same date the State

Government passed an order under s. 34 of the Road Transport Corporation Act No. LIV of 1950 by which it directed that the Corporation shall take the management of the Road Transport Department of the Government of Andhra, Pradesh and all assets and liabilities of the Department shall pass to the Corporation. The staff of the Road Transport Department were given option to serve under the Corporation and direction was given that those who opt to serve the Corporation shall be employed by the Corporation subject to the regulations made under the Act and the assurance given by the Government to the employees. It was urged in the first place that such an order could not be passed under s. 34 of the Road Transport Corporation Act. Section 34, however, gives very wide powers to the State Government to give directions to the Corporation, including directions relating to the recruitment, condition of service and training of its employees, wages to be paid to the employee, reserve to be maintained by it and disposal of its profits or stocks. In the circumstances, it was open to the State Government, under the wide powers Conferred by s. 34 of the Road Transport Corporation Act, to ask the Corporation which was being created to take over the assets, liabilities and the employees of the Road Transport Department which was being wound up. Now, the effect of this order was to make the Road Transport Corporation a successor of the Road Transport Department. It is true that there is nothing in Chapter IV-A of the Act which provides for succession of one kind of undertaking as defined in s. 68A(b) by another kind of undertaking as defined therein, but when in fact it happens that the Road Transport Corporation is ordered under s. 34 of the Road Transport Corporation Act to take over everything from the Road Trans- port Department, there is no reason why it should not be considered to be the successor of the Road Transport Department which was at that time the State Transport Undertaking. If the Road Transport Corporation is thus a successor of the State Transport Undertaking from the 11th of January, 1958, I do not see why it cannot enforce the scheme which had already been approved at the instance of its predecessor. I can see no sense in requiring the Road Transport Corporation to go through all these steps which had been gone through by its predecessor, except that it would delay the coming into force of the scheme ; probably, the argument has been raised merely for the sake of delay. But I am of opinion that the Road Transport Corporation in this case being the successor of the State Transport Undertaking which got the Scheme prepared and approved is en-titled to enforce it under s. 68-F of Chapter IV-A in the absence of any provision to the contrary in the Chapter. This contention also fails.

In view of what I have said above on the second contention, the petition fails and I would dismiss it with costs. SINHA, J.-I have had the advantage of perusing the judgments prepared by our brothers, Subba Rao and Wanchoo, JJ. After giving my best consideration to the opinions expressed in the two judgments, I have come to the conclusion that I am not in a position to agree with all the conclusions arrived at by our brother Subba Rao.

Two main controversies were raised on behalf of the petitioners, namely, (1) that the provisions of Chapter IVA of the Motor Vehicles Act, 1939 (which will be referred to in the course of this judgment as the Act), violate the fundamental rights guaranteed to citizens of India under the Constitution, and (2) that the scheme framed under the Act, was ultra vires the Act. I agree with my brother Subba Rao that the said Chapter IVA of the Act does not infringe any fundamental rights of the petitioners, and that those provisions are constitutionally valid. I also agree with him in holding that the Road Transport Department of the Andhra Pradesh Government, is a State Transport

Undertaking under the Central Act; that the Notification publishing the scheme had been validly done, and that the conditions precedent to the initiation of the scheme, had been fulfilled. But I do not agree with him in his conclusion that the State Government, in approving the published scheme, was discharging any judicial or quasi-judicial function. On the other hand, I agree with my brother Wanchoo in his conclusion that in so doing, the State Government was only performing its normal administrative function.

As my learned brothers aforesaid have stated the relevant facts in detail, it is not necessary for me to repeat them, but as I differ from my learned brother Subba Rao, with whom some of my colleagues on the Constitution Bench have agreed, and for whose opinions, I have the greatest respect, I should state my reasons for differing from them and for agreeing with our brother Wanchoo. It may be taken as the settled view of this Court that the question whether a certain decision envisaged in a statute, is judicial or quasijudicial or only administrative in character, must de- pend upon the terms of the statute law itself, apart from any pre-conceived notions about the functions of a court or other tribunals vested with the duty and jurisdiction to decide controversies as a judicial body, vide Province of Bombay v. Kusaldas S. Advani (1), Nagendra Nath Bora v. Commissioner of Hills Division(2) and Express Newspapers Limited v. Union of India (3). Now, let us see what has been envisaged by the im-

(1) [1950] S.C.R. 621. (2) A.I.R. 1958 S.C. 398. (3) A.I.R. 1958 S.C. 578.

pugned provisions of Chapter IVA of the Act. The first step in the process is the preparation of a scheme of road transport service by a State Transport Undertaking "for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service." Such a scheme may be to the exclusion, complete or partial, of other persons or otherwise. The second step would be to publish such a scheme in the Official Gazette and also in such other manner as the State Government may direct, giving particulars of the nature of the service proposed to be rendered, area or route proposed to be covered and other prescribed particulars-(s. 68-C). The third step in that process is the filing of objections to the scheme by any person affected by the scheme so published. Those objections have to be filed before the State Government within thirty days from the date of the publication of the scheme-(s. 68-D (1)). The fourth step is to be taken by the State Government, of considering the objections after giving an opportunity to the objectors or their representatives and the representatives of the State Transport Undertaking, to be heard-(s. 68-D(2)). And the last step is that after hearing all concerned, the State Government may approve or modify the scheme. It is noteworthy that this section does not contemplate an outright rejection of the scheme but only a modification, if it is necessary. The scheme as approved or modified, has then to be published in the Official Gazette, and thereupon, the scheme becomes final. Such a scheme is called the "approved scheme ", and the area or route to which it relate,,;, is called the "notified area"

> or "notified route"-Is. 68-D(3)). The approved scheme may at any time be cancelled, or modified by the State Transport Undertaking, according to the procedure already indicated, as contained in S. 68-C and s. 68-D, if it is proposed to modify it-(s. 68-E). The provisions of Chapter IV, relating to the grant of stage carriage permits, etc., have been abrogated so as to make it obligatory on the Regional Trans- port

Authority to issue permits applied for by a State Transport Undertaking, in pursuance of the approved scheme. Not only that, with a view to giving effect to the approved scheme in respect of a notified area or notified route, the Regional Transport Authority has been authorized to refuse renewal of any permit, to cancel any existing permit, or to modify the terms of any existing permit-(s. 68-F). The provisions of s. 64, relating to appeals by aggrieved persons against orders of refusal to grant a permit, or of revocation or suspension of a permit, or of refusal to renew a permit, etc., have been abrogated in so far as those orders have been passed under s. 68-F. A review of the provisions aforesaid, contained in ss. 68-C to 68-F in Chapter IV-A, leads to the following conclusions:-

(1)A State Transport Undertaking has been authorized to determine whether or not it is in the public interest that road transport services in general, or any particular class of service, should be run and operated by the State Undertaking, in relation to any area or route or a portion thereof, keeping in view the purpose of providing an efficient, adequate, economical and properly coordinated road transport service. It is for the State Transport Undertaking to prepare a scheme in furtherance of its determination in favour of such a service, and to publish the same in the Official Gazette and elsewhere, with a view to informing the public, including those who may be affected by such a scheme.

(2) Objections to such a scheme may be taken by parties interested, but such objections are not claims. (3) The State Government is authorized to decide the question whether the proposed scheme should be approved or modified, after hearing the parties or their representatives in support of their objections to the scheme. As the objections have to be directed to the merits of the scheme proposed by the State Transport Undertaking, there is no question of any lis between conflicting claims.

(4) No particular person or body of persons in the Governmental hierarchy of officers, has been designated as the Authority to hear the objections and to pronounce upon them, unlike the provisions in Chapter IV. Neither the provisions in Chapter IV-A nor the rules made in pursuance of s. 68-1, contemplate adducing evidence or calling witnesses in support of or in opposition to the proposed scheme.

(5)The right of appeal as contemplated by s. 64 in Chapter IV, has been expressly abrogated by s. 68-F(3). Nor is there any provision in Chapter IV-A, requiring reasons to be given in writing for an order. passed by a Regional Transport Authority under s. 68-F(1) and (2), as contrasted with s. 57(7) in Chapter IV, which requires the Authority to give its reasons in writing for refusing an application for a permit of any kind, because such an order is open to appeal, revision or review.

The question now arises whether, in view of the provisions of Chapter IV-A, summarized above, and the conclusions as indicated above, the determination by the State Government is judicial or

quasi-judicial in character, as contended for the petitioners, or only of an administrative character, as contended on behalf of the respondents. In order that a determination may be characterized as judicial or quasi- judicial, it is essential that it should be objective, based on evidence pro and con (not necessarily given in accordance with the strict rules of evidence) by a determinate authority who should not have the right to delegate such a function of a judicial character. Section 68-D(2) authori- zes the State Government to decide whether or not the proposed scheme should be approved or modified.' The "State Government" may mean the Governor himself or any of his Ministers or Deputy Ministers or any officers in the Secretariat, according to the rules of business promulgated under Art. 166 of the Constitution. Section 68-D(2) could not have meant that the Governor himself or any of his Ministers should personally hear the objections-that would be throwing too great a burden on them. The objections may be heard by any one who has been delegated that power. If that is correct, the function to be performed under s. 68- D(2), does not satisfy the test of a judicial hearing. Under that section, the objections may be heard by 'A' and the decision arrived at by 'B'. If that is a regular procedure under that section, that is not an index of a judicial process.

Another very important consideration pointing to the conclusion that the determination under s. 68-D(2) is not of a judicial character (using it in the comprehensive sense, including 'quasi-judicial', which expression has not been approved by high judicial authorities), is that no objective tests have been laid down in Chapter IV-A with reference to which, the determination has to be arrived at. The expressions "efficient", "adequate", "economical", "properly coordinated" and "public interest", are matters of opinion and policy as s. 68-C itself indicates, and do not lay down any objective tests. If I am right in that conclusion, there cannot be any question of evidence forthcoming in proof of something which is subjective to the authority determining that matter.

A very fundamental consideration in this connection, is whether ss. 68-C and 68-D contemplate any lis. In other words, what is the proper scope and ambit of the inquiry envisaged by those sections ? The scheme prepared and published in accordance with s. 68-C, by a State Transport Undertaking, is placed before the public only after the Undertaking has reached the conclusion that it is necessary in the public interest. After the scheme has been prepared and published as aforesaid, the objections to be filed under s. 68-D have reference to the basic question whether or not the scheme as published, was in public interest. Such objections are open to any person or organization, e.g., an Automobile Association, and are not limited only to persons who are providing road transport services. In my opinion, it is a mistake to suppose that the objections contemplated by s. 68-D(l), could be on grounds personal to the objectors who are engaged in the business of providing road transport services. It is not open to any particular individual carrying on the business of providing road transport services, to claim that his route should be excluded from the operation of the published scheme. I am led to that conclusion by the effective words of s. 68-D(l), namely, "file objections thereto", that is, to the scheme published under s. 68-C. The objections have to be limited to the merits of the scheme as propounded by the State Transport Undertaking. It will, therefore, be opening the gates too wide to hold that the objections have reference to particular routes or portions of routes covered by private transport services. The underlying purpose of inviting objections, is not to invite "claims" by individual businessmen engaged in providing road transport services, but to bring out useful information bearing on the feasibility and soundness of the scheme, as propounded

by the Undertaking. Once, the Government has decided upon a policy of nationalization of road transport facilities, the question of safeguarding the interest of individual businessmen in that line, is no more relevant. What is relevant. for the purpose of the inquiry by the Government, on receipt of objections, is whether the published scheme is in the interest of the public. In my opinion, therefore, it is erroneous to suppose that the object of s. 68-D(l) is to afford any remedy to a private individual in his personal interest. Particulars of the scheme required to be published under s. 68C, are meant for the information of the public, so that persons feeling interested in a public venture like that, may offer intelligent and constructive criticism with reference to the merits of the scheme. It is equally erroneous to suppose that there are two parties-one, represented by the Undertaking, and the other, represented by persons who are engaged in the business of providing road transport services-and that the Government is the third party, which is the arbitrator between the two contesting parties. That, in my opinion, is not a correct reading of the provisions of Chapter IV-A of the Act. The whole aim and object of that Chapter is to replace individual businessmen engaged in that trade, by nationalised road transport services which are meant to be run in the interest of the community as a whole, and thus to serve the best public interest. The Government is as much interested in the scheme as the Road Transport Undertaking which is a creature and a limb of the Government, brought into existence with a view to implementing the policy of the Government to provide nationalised road transport services. That being the whole scheme of the policy of nationalisation, it is not correct to represent the State Transport Undertaking as entering into competition with other individuals or incorporated bodies whose business it is to provide the same kind of transport facilities. That is made clear by the provisions of s. 68-F, which, as indicated above, make it obligatory on the Regional Transport Authority to issue permits as applied for by the State Transport Undertaking. It follows from the foregoing observations that there is no question of the Government functioning as an adjudicating authority as between the rival claims of the Undertaking and private persons engaged in the same kind of activity, or that the Secretary to Government in the Department of Road Transport, when he personally heard the objections, was functioning as a judge, or that he was disqualified, by any bias, from hearing those objections. If we carry this line of reasoning to its logical conclusion, then even the Minister in-charge of the Department, may be said to be equally interested, and therefore, equally biased, and thus, disqualified from hearing those objections and coming to his own determination, as contemplated in s. 68-D(2). In my opinion, the concept that a person should not be a judge in his own cause, is wholly foreign to the scheme and provisions of Chapter IV-A of the Act.

The scheme as prepared and published, may have proposed, as it did in the instant case, completely to exclude other persons from providing road transport service in the notified area by the notified routes. But the State Government is not concerned with determining whether any or some or all of the objectors could be permitted to provide or continue to provide their own road transport service. The State Government under s. 68-D(2) has only to decide whether or not the proposed scheme should be approved or modified in any way. The decision to be arrived at by the State Government, is confined to the scheme, and is not concerned with rival claims by persons providing road transport service in the same area or by the same routes. That, in my opinion, is the reason why under that section, the State Government has not been authorized altogether to.

cancel the scheme, but only to approve or modify it. The State Government has to examine the soundness of the declaration made by the Road Transport Undertaking that the proposed scheme is in public interest. The stage of cancellation comes, if at all, later under s. 68-E, when experience gained in working the approved scheme, may lead the State Transport Undertaking to the conclusion that it should be cancelled or modified.But at the initial stage, that is to say, under s. 68-D, the proposed scheme is already there only to be approved or modified in the light of the objections raised, if any. It has been held and it may be taken as well-settled that when there is a competition between a number of applicants for a particular route for supplying road transport service, the Regional Transport Authority or any other Authority deciding between those conflicting claims, has to determine the matter in a quasijudicial way, because they are determining questions affecting the rights of individuals. But in the proceeding before the State Government, no such rival -claims have to be decided upon. What has to be determined is whether the proposed scheme will serve public interest. Thus, in proceedings under Chapter IV of the Act, individual claims have to be decided upon, whereas under Chapter IVA, it is the collective interest of the community as a whole, which is the subjectmatter of determination by the State Government. In other words, the proposed scheme is the outcome of the decision by a limb of the State Government (State Transport Undertaking), which has come to the con- clusion that it is in the public interest that road transport service should be run and operated by the State. The calling of objections by persons affected by the scheme, is not with a view to deciding between the rival claims of the State Undertaking and individuals providing road transport services in the areas or routes proposed to be covered. The State Transport Undertaking has not made any claim at this stage. Such a claim arises after the determination by the State Government Under s. 68D(2). That stage is reached when the State Transport Undertaking applies for permits under s. 68F. Such a claim for a permit, once made by the Undertaking, is no more a rival claim to be treated along with the claims of other individuals providing such road transport services, but an absolute claim which under that section shall be granted by the Regional Transport Authority which is authorized even to cancel an existing permit or modify the terms of an existing permit, or to refuse renewal of permits, with a view to implementing the approved scheme. In my opinion, therefore, it is not correct to view the proceedings under Chapter IVA before the State Government as a lis between any rival claims, unlike proceedings under Chapter IV of the Act. In view of these considerations, I would hold that there is no lis between rival claims, no determinate tribunal to determine any lis, and no procedure prescribed in Chapter IVA approximating or even simulating judicial procedure. That being so, there is no question of any bias, because there can be none in a determination which is come to by officers of the Government in the discharge of their administrative duties. As already indicated, the question now under consideration, does not admit of a general answer. The answer must depend upon the relevant statutory provisions, and one case decided on its own basic statutory provisions, cannot be a controlling authority for another; but, by way of illustration, reported cases dealing with similar questions, have been referred to. My learned brother Wanchoo, J., has referred in detail to Franklin's case, hence, I need not add any observations with reference to that case. But another case, namely, Robinson v. Minister of Town and Country Planning (1), perhaps, not referred to at the bar, seems to me to be instructive in so far as it has discussed this very question with reference to the provisions of s. 1(1) of the Town and Country Planning Act, 1944, which is in these terms:- :-

> " Where the Minister of Town and Country Planning (in this Act referred to as 'the Minister') is satisfied that it is requisite, for the purpose of dealing satisfactorily with extensive war damage in the area of a local planning authority, that a part or parts of their (I) [1947] 1 All E.R. 851, 853, 854.

area, consisting of land shown to his satisfaction to have sustained war damage or of such land together with other land contiguous or adjacent thereto, should be laid out afresh and redeveloped as a whole, an order declaring all or any of the land in such a part of their area to be land subject to compulsory purchase for dealing with war damage may be made by the Minister if an application in that behalf is made to him by the authority before the expiration of five years from such date as the Minister may by order appoint as being the date when the making of such applications has become practicable. A part of the area of a local planning authority as to which the Minister is satisfied as aforesaid is in this Act referred to as an 'area of extensive war damage'."

Lord Greene, M. R., who delivered the leading judgment of the Court of Appeal, reversing that of Henn Collins, J. thus summarized the procedure laid down in the Act :-

> " The procedural provisions in connection with the obtaining of an order under the sub-section may, so far as relevant, be summarised as follows: (a) Under sub-s. (4) at least two months before the application is made the authority must publish a notice in a local newspaper; (b) under sub-s. (5) the application must 'designate' the land to which the application relates by reference to a map with or without descriptive matter ; (c) under sub-s. (6) the a application must be accompanied by a statement illustrated by a map, for indicating the manner in which it is intended that the land in the area of extensive war damage should be laid out as respects its internal arrangement and in relation to the existing or intended lay-out of the surrounding locality, and the manner in which it is intended that such land should be used whether for purposes requiring the carrying out of development or otherwise'; (d) under sub-s. (7) if the Minister is satisfied that these particulars are adequate for enabling the expediency of the making of an order' to be properly considered, he notifies the authority who must then advertise for objections; (e) under sched. I unless the Minister, apart from an objection (which must be accompanied by a written statement of its grounds) decides to refuse the application or to make an agreed modification to meet the objection, he must 'consider the grounds of the objection as set out in the statement' and may call for a further statement. Under para. 4 of the schedule the Minister, 'if satisfied that he is sufficiently informed, 'for the purpose of his deciding as aforesaid (sc. whether or not to make the order applied for), as to the matters to which the objection relates' he may decide to make the order without further investigation. Subject, to this, the Minister (para. 5) must give the objector an opportunity of appearing before a person nominated by the Minister and, if the objector avails himself of this, a similar opportunity to the authority. Under para. 6, if it appears to the Minister that the matters to which the objection relates call for investigation by a public inquiry, he must cause such an inquiry to be held, in which case, the requirements of para. 5 as to a private hearing need not be complied

> with; (f) under s. 1(8), subject to the provisions of sched. 1, the Minister may make the order with or without modification, except that he cannot extend the area unless all persons interested consent."

In the case of Phoenix Assurance Co., Ltd. v. Minister of Town and Country Planning (1), Henn Collins, J. considered the nature of the order to be passed under s. I (I) of the Town and Country Planning Act, 1944, and came to the conclusion that the Minister's function was of a quasi- judicial character. He followed that decision in the case which came up before the Court of Appeal in Robinson v. Minister of Town and, Country Planning (2). The Court of Appeal reversed the decision of the learned Judge, and did not approve of his decision in Phoenix Assurance Co., Ltd. v. Minister of Town and Country Planning (1). In the course of his judgment, Lord Greene, M. R., observed as follows at page 859:-

> " It is the case of an original order to be made by the Minister as an executive authority who is at liberty to base his opinion on whatever material he thinks fit, (I) [1947] 1 All E.R. 454.
>
> (2) [1947] 1 All E. R. 851, 853, 854.

whether obtained in the ordinary course of his executive functions or derived from what is brought out at a public inquiry if there is one. To say that, in coming to his decision, he is in any sense acting in a quasi-judicial capacity is to misunderstand the nature of the process altogether. I am not concerned to dispute that the inquiry itself must be conducted on what may be described as quasi-judicial principles, but this is quite a different thing from saying that any such principles are applicable to the doing of the executive act itself, i.e. , the making of the order. The inquiry is only a step in the process which leads to that result, and there is, in my opinion, no justification for saying that the executive decision to make the order can be controlled by the courts by reference to the evidence or lack of evidence at the inquiry which is here relied on. Such a theory treats the executive act as though it were a judicial decision (or, if the phrase is preferred, a quasi-judicial decision) which it most emphati- cally is not."

I have devoted considerable space to the decision of the Court of Appeal, (supra), to show the close resemblance between the procedure envisaged in the Act of the British Parliament, and the law as laid down in Chapter IV-A of the Act. In the reported case also, there had to be an inquiry if objections were raised to the notified scheme of town planning, and the Minister concerned had to consider all the evidence led on behalf of the objectors. In that case, unlike the instant case, there was a provision for receiving evidence pro and con, but even then, the Court of Appeal did not hold that the function of the Minister was of a judicial or quasi-judicial character, chiefly on the ground that no objective tests were possible in coming to his conclusions before passing the order under the relevant section of the Act of Parliament.

For the reasons given above, I have come to the conclusion, in agreement with my brother Wanchoo, J., that the Government or the Minister concerned, when passing an order under s. 68-D(2), had not to discharge a quasi-judicial function, but was acting only in its or his administrative capacity. It

follows from this con- clusion that all considerations flowing from the basic idea of the proceedings before the State Government being of a quasi-judicial character, are wholly out of the way. It must, therefore, be held that the order of the State Government, impugned in this case, is not open to any interference by the courts. I would, therefore, dismiss the petition with costs.

ORDER In view of the opinion of the majority the order approving the scheme is hereby quashed and a direction issued to the first respondent to forbear from taking over any of the routes in which the petitioners are engaged in transport business. This will not preclude the State Government from making the necessary enquiry in regard to the objections filed by the petitioners in accordance with law. The petitioners will have liberty to file additional objections, if any. The parties to bear their own costs.