Gajraj Singh Etc vs The State Transport Appellate ... on 12 September, 1996

Equivalent citations: AIR 1997 SUPREME COURT 412, 1997 (1) SCC 650, 1996 AIR SCW 3793, 1996 ALL. L. J. 1767, (1996) 8 JT 356 (SC), (1996) 2 ACC 586, (1997) 2 CIVLJ 458, (1997) 1 RECCIVR 244

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L. Hansaria, S.B. Majmudar

PETITIONER:
GAJRAJ SINGH ETC.

Vs.

RESPONDENT:
THE STATE TRANSPORT APPELLATE TRIBUNALAND ORS. ETC.

DATE OF JUDGMENT: 12/09/1996

BENCH:
K. RAMASWAMY, B.L. HANSARIA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

W I T H C.A.NOS. 12004,12007,12005-06,12008 AND 12002/96 11430 (Arising out of SLP (C) Nos. 412, 924, 490,/1913/96 and 27355/95) AND WRIT PETITION (C) NO. 146 OF 1996 J U D G E M E N T K. Ramaswamy, J.

Common questions of law have arisen in all these cases. The facts in Gajraj Singh's case are sufficient for disposal of all these cases. Though notices were served on respondents, Shri Goel appeared for the State and Shri Promod Swarup for the UPSRTU, none is appearing in other cases.

In 1988, the appellant was granted a stage carriage permit on the Meerut-Baraut route under

Section 47(3) of the Motor Vehicles Act, 1939 (4 of 1939) (for short, the 'Repealed Act') for a period of 3 years. The Motor Vehicles Act, 1988 (59 of 1988) (for short, the 'Act') came into force w.e.f. July 1, 1989. The said permit was renewed under Section 81 of the Act in 1991 for a further period of 5 years and the second renewal was granted in 1995. Respondents 3 to 17 had applied under Section 70 for grant of stage carriage permits under Section 72 on the Meerut- Gangoh route which intersects part of the route on which the appellant was operating his stage carriage. Despite objections raised by the appellant, the State Transport Authority (for short, 'STA') granted permits to them on November 23, 1992 which came be challenged by the appellants in revision filed under Section 90 before the State Transport Appellate Tribunal (for short, 'STAT'). The respondents questioned the appellant's locus standi under the preliminary objection that the renewal granted under Section 81 to the appellant was void. By order dated August 9, 1995, the STAT upheld the preliminary objection and held that the appellant has no locus standi to object the grant of permits to the respondents, since the renewal of the permit granted to the appellant was not valid in law as he had not got any new permit under the Act. The High Court in the impugned judgment dated October 13, 1995 made in Writ Petition No.26132 of 1995 has upheld the order of the STAT. Thus, this appeal by special leave.

Shri K.K. Venugopal, learned senior counsel for the appellant, contended that the renewal of the permit of the appellant granted under the Repealed Act is a permit under the Act and its operation was saved by Section 217(2) (a) read with sub-section renewal granted under Section 81 was valid in law. There was no need for the appellant to obtain a fresh permit under the Act as the renewal is a continuation of the original permit which is a vested right. The effect of saving provisions in Section 217(2) (a) is to allow all the permits granted under the Repealed Act to continue after renewal under the Act. Section 217(2) (a) and sub--section (4), thus, obviate the need to obtain fresh permit under the Act and, therefore, it would be unnecessary. In support thereof, he placed strong reliance on M/s Gurcharan Singh Baldev Singh vs. Vashwant Singh & Ors. [(1992) 1 SCC 428]. He further contended that this Court in Secretary, Quillon Distt. Motor Transport Workers' Cooperative Society Ltd. vs. Regional Transport Authority & Ors. [(1994) Supp (3) SCC 210] did not intend to lay down that after the Act came into force, all the holders of stage carriage permits granted under the Repealed Act would be required to obtain fresh permits under the Act.Section 6 of the General Clauses Act (for short, the 'GC Act') read with Section 217(2) (a) and (4) saves operation of all those permits which were alive when the Act came into force. Consequently, renewals granted under Section 81 were valid. For contra construction, an argument of inconvenience was forcefully projected. He argued that Section 217(2) (b) would be applicable only if the permit is inconsistent with the provisions of the Act in which event the life of the permit granted under the Repealed Act gets extended only for the balance period of permit.

Shri S.K. Dhaon, learned Counsel appearing in C.A. @ SLP (C) No.27335/95, contended that the permits granted to the existing operators under the nationalised scheme in Chapter IV-A of the Repealed Act are not required to be renewed under Section 81 of the Act as they have already been saved being existing permits. So the need to obtain fresh permits under the Act would be inconsistent with the scheme of the Repealed Act as well as the Act. Shri Venugopal buttresses the contention emphasising that the renewal is only a continuation of the existing permit granted under the Repealed Act. The need for fresh permit arises only if the renewal is inconsistent with the

provisions of the Act. Therefore, the view of the High Court is clearly not sustainable in law. In support thereof, Shri Venugopal places strong reliance on D.Nataraja Mudaliar vs. The State Transport Authority, Madras [(1978) 4 SCC 290], State of Punjab vs. Manohar Singh [(1955) 1 SCR 893] and M/s. Universal Imports Agency & Anr. vs. The Chief Controller of Imports and Exports & Ors. [(1961) 1 SCR 305]. Shri Harish N.Salve, appearing for some of the existing operators in the nationalised schemes, contended that they were not paid compensation since permits in their names were saved with corridor restrictions. They are, therefore, entitled to renewal of permits as a matter of right.

Shri Adarsh Kumar Goel, learned counsel for the State, resisted the contentions. According to him, the scheme of the Act in many a provision is inconsistent with the scheme of operation in the Repealed Act. When the Legislature manifested its intention as to its inconsistency in the operation of the Act with the provisions of the Repealed Act, the STA or the Regional Transport Authority (for short,'RTA'), as the case may be, would be devoid of power and jurisdiction to grant renewal of permit under the Act. Consequently, the erstwhile holders of permits are required to obtain fresh permits under the Act. The Repealed Act has been saved only to the extent of validating, under Section 217(2) (b), the continuation of the permit for the unexpired period granted under the Repealed Act. The owner of the vehicle, thereby, became entitled to operate, for the balance period, stage carriage on the respective route. On its expiry, the erstwhile holder of the permit ceases to have the permit under the Act until he obtains afresh stage carriage permit under the Act. To obviate the difficulty of running the stage carriage between the date of application for permit and the date of grant, the Act provides for grant of temporary permits. There is no hiatus in the operation in that behalf and any grant of permit or renewal should only be consistent with the provisions of the Act. Otherwise, the Repealed Act continues to remain in operation, in spite of its express repeal by Section 217(1) of the Act. The ratio of this Court in Secretary, Quillon District Motor Transport Worker's cooperative Society Ltd.'s case (for short, 'Quillon's case) would be applicable to the situation. The ratio in Gurucharan Singh's case (supra) would be applicable only to a pending application for renewal filed before the Act came into force which would be disposed of by operation of Section 217(2) (a) as saved by Section 217(4) of the Act. If so understood, there is no inconsistency in the ratio of the aforesaid two decisions of this Court and the operation of the provisions of the two Acts.

We issued notice to Shri Promod Swarup to appear on behalf of STUs and argue on the question of renewal of permits covered by the schemes. He contended that they are not entitled to renewal under Chapter VI of the Act. Chapter V does not apply to them. Therefore, they have no right to apply or obtain permit under Section 72 or renewal under Section 81.

We may make it clear at this juncture that when the cases had come up for admission and Shri Venugopal had pointed out to plausible misapprehension in the operation of the ratio laid down by this Court in the above two cases, we had referred the matter to three Judge Bench. Thus, the matter has come before this Bench.

The question for consideration is: whether the holder of a stage carriage permit under the Repealed Act is required to obtain fresh permit or a renewal of the permit as per the provisions of the Act? To

appreciate to contentions in proper perspective, it would be profitable to refer to the provisions of the Act, extent of their operation and their inconsistency with the provisions in the Repealed Act so as to focus the true intentment and operation of the Act. Section 2(31) of the Act defines "permit" to mean a permit issued by the State or Regional Transport Authority or an authority prescribed in this behalf under the Act (emphasis supplied) authorising the use of motor vehicle as a transport vehicle. "Transport vehicle"

> has been defined under Section 2(47) to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. "Stage carriage" has been defined under Section 2(40) to mean motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. "Route"

has been defined under Section 2(38) to mean a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. "Public service vehicle" has been defined by Section 2(35) to meas any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage. These definitions similarly had found place in the Repealed Act with slight variations.

Chapter V of the Act under the heading "Control of transport vehicle" regulates use of, or permission for use of, the vehicles and the necessity to obtain permits in that behalf by an owner of motor vehicle. Section 66 enjoins every owner of a motor vehicle to obtain permit and no owner shall use the motor vehicle as stage carriage except in accordance with the conditions of the permit granted or countersigned by the prescribed authority for its use in the public place. The manner in which the vehicle should be used gets regulated by the conditions of the permit, the rules and the law; the details thereof are not material. Section 67 empowers the State Government to control road transport. Section 68 enumerates the manner in which the RTA or the STA or other authorities under the Act would exercise the powers and perform functions specified under the Act. Section 69 enjoins the owner of a vehicle to make application for permit.

Section 70 specifies the procedure for making an application to obtain stage carriage permit and the conditions subject to which the application is required to be dealt with. Section 71 prescribes the procedure for STA or RTA to consider such applications for grant of stage carriage permits. It envisages, under sub-section (3) thereof, that subject to the number of vehicles, road conditions and other relevant matters, the State Government shall, by a notification, direct and STA or RTA to limit the number of stage carriages generally or of any specified, type as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs. Its operation is subject to clauses

(b) and (c) thereof. The proviso to sub-section (3) of Section 71 envisages that other conditions being equal, preference shall be given to applications for permits from

(i) State transport undertakings; (ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; (iii) ex- servicemen; and (iv) any other class or category of persons, as the State Government may, for reasons to be recorded in writing, consider necessary. On other routes, except town service, no restrictions are imposed unlike in Section 47(3) of the Repealed Act to grant stage carriage permits. Section 72 empowers the RTA or STA to decide an application for grant of a permit to operate a stage carriage with any one or more of the conditions enumerated under sub-section (2) thereof or the rules or conditions attached to the permit.

Section 80 prescribes procedure to apply for and grant of renewal of permits. Sub-section (2) envisages that on an application made under sub-section (1) at any time, the STA or RTA or any prescribed authority under Section 66,shall not ordinarily refuse to grant an application for permit of any kind made under the Act. (emphasis supplied). The proviso lifts the embargo of sub-section (2) and permits summary refusal of the application, if such a grant would have the effect of "increasing the number of stage carriages as fixed and specified in a notification" under Section 71(3) (a) or of the contract carriages as fixed and specified in a notification under Section 74(3(a). Under the proviso to Section 71 (1), prior to its amendment thereof by Section 23 of Amendment Act 54 of 1994, the RTA/STA was prohibited to grant permit for a route of 50 kilometers or less to all juristic persons and to grant permit "only to an individual or a State Transport undertaking". The Amendment became operative from November 14, 1994 and the above prohibition no longer operates.

Section 81 regulates renewal of permits and duration thereof, sub-section (1) visualises that a permit, other than a temporary permit issued under Section 87 or special permit issued under Section 88(8), shall be effective from the date of issuance or renewal thereof for a period of 5 years. Under the proviso, the period of countersigned permit is coterminus with the validity of the primary permit. Sub- section (2) prescribes the limitation within which an application for renewal should be made before expiry of original grant or renewal. Sub-section (3) gives discretion to condone the delay in making the application for the grounds mentioned thereunder. Sub-section (4) enumerates grounds for refusal of renewal of a permit for one or more of the grounds enumerated thereunder. The terms and conditions subject to which stage carriage permit is required to be renewed are different from those of Section 58 of the Repealed Act except the procedural part. Sub- section (2) of Section 58 of the Repealed Act gives preferential treatment for renewal of a permit in favour of the holder of the permit, while Section 81 of the Act does not give such preferential right to renewal. On the other hand, if the permit granted under Section 72 exceed the limit prescribed by the State Government for town service, there would be danger of refusal of renewal subject to giving reasons in support thereof. Equally, in relation to other routes, discretion is given to reject renewal of a permit for reasons to be recorded in the order.

Chapter VI deals with special provisions relating to State Transport Undertakings (for short, 'STU') which is equivalent to Chapter IV-A of the Repealed Act. By operation of Section 98, Chapter VI and the rules and orders made thereunder shall have overriding effect over the inconsistent provisions contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law. The STU shall provide an efficient, adequate, economical and

properly coordinated road transport service on the notified area or route or portion thereof to the exclusion of the private operators except as exempted in the scheme itself which itself is a self-operative law. The details are not material for the purpose of this case except that under the said Chapter, there is no specific provision, like Section 68F (1D) for renewal in favour of any person or any class in relation to an area or route or portion thereof covered by such scheme for renewal, or Section 68F (1E) in favour of STU.

Section 217 repeals the existing laws and provides savings from its operation. Sub-section (1) specifically repeals Act 4 of 1939 and any law corresponding to that Act in force in any State before July 1, 1989. Sub-section (2) with a non obstante clause provides certain savings as provided thereunder:

> Clause (a) of Section 217(2) provides that notwithstanding the repeal of Act 4 of 1939 or any other analogous enactments in operation, any notification issued, rule, regulation made, order passed or notice issued or any appointment or declaration made, or exemption granted or any confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done (emphasis supplied) or any other action taken under the Repealed Act and in force immediately before July 1, 1989 shall, so far as it is not inconsistent with the provisions of the Act (emphasis supplied) be deemed to have been issued, made, granted, done or taken under the corresponding provision of the Act. In other words, clause (a) saves such of those enumerated events under the Repealed Act which are consistent with the provisions in the Act.
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> Clause (b) of Section 217(2) provides that any certificate of fitness or registration or licence or permit (emphasis supplied) issued or granted under the repealed enactment shall continue to have effect after such commencement under "the same conditions and for the same period" as if the Act had not been passed (emphasis supplied). In an emphatic manner, the saving provision provides that, notwithstanding the repeal of Act 4 of 1939 or any corresponding law, the permit issued under the Repealed Act should continue to operate proprio vigore till its life expires under the same conditions and for the same period as if the Act was not passed. Other clauses are not relevant. Hence they are not dealt with.
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> Clause (e) deals with the scheme under Section 68-C or under the corresponding law in operation, which shall be disposed of under Section 100 of the Act. Similarly, temporary permits issued under sub-section (1A) of Section 68F of the Repealed Act or under the corresponding provisions shall, because of use of clause (f), continue to remain in force until approved scheme under Chapter VI of the Act is published. The omission to provide similar right of renewal of permanent permit like one available under Section 68F(1D) to a private operator or to STU under Section 68F(1F) is significant and deliberate. It should be presumed that the Parliament having made similar provision in Section 81 for renewal of permits issued in Chapter V of the Act, the omission thereof in Chapter VI in relation to the private operators manifests the

intention of the Parliament that the right to obtain stage carriage permit, contract carriage permit or temporary permit on the notified area or route or a portion thereof has been frozen to all private operators except to the extent of the right to ply stage carriage on the basis of the permits saved under Chapter IV-A of the Repealed Act. Therefore, the result would be that even the private operators whose permits were saved also would have limited operation under Section 217(2)

(b) to ply their stage carriages for the unexpired period only. So, limited validity of permits to run stage carriages etc, on the nationalised routes or notified area or portion thereof in the approved scheme was saved so that the holder of the stage carriage permits will have full course of unexpired life of the permits granted under the Repealed Act. In other words, Section 217(2)(b) breathed limited life into all permits granted under the repealed Act except those granted to STU under approved or draft schemes to run its full course. It was so manifested by Section 217(4) and Section 6 of the GC Act. The operation of law in Chapter IVA of the Repealed Act as declared by this Court would be of much assistance for interpretation in this behalf.

In Mysore State Road Transport Corporation vs. Mysore State Transport Appellate Tribunal [(1974) 2 SCC 750], it was held that no licence can be granted to any private operator whose route traversed or overlapped any part of a notified route or routes as prohibited in Chapter IV-A of the Repealed Act. An applicant seeking grant of a permit on a route which overlapped even on a portion of a notified route was held to be not entitled to the grant of the permit. In Adarsh Travels Bus Service and Another vs. State of U.P. & Ors. [(1985) 4 SCC 557], a Constitution Bench of this Court approved the above law and had held that under Sections 68FF, 68B, 68C, 68D read with Section 2 (28A), once a scheme was published under Section 68D in relation to any area or a route or portion thereof, whether to the exclusion, complete or partial, of other persons or otherwise, no person than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. No private operator can operate his vehicle on any portion of the notified area or notified route unless authorised to do so by terms of the scheme itself. Therefore, corridor shelter was impermissible on a notified area, route or a portion of the route. It was further held that unless the scheme provides for exempting operators already having permit for common sector from the scheme by incorporating appropriate conditional clauses in the scheme to enable them to ply their vehicles over common sectors without picking up or setting down passengers on the common sectors, it was not open to the RTA or STA to grant permits on the notified area or notified route providing corridor shelter.

In T.V. Nataraj & Ors. vs. State of Karnataka & Ors. [(1994) 2 SCC 32], a Bench of two Judges of this Court considered the integrity of the route, the effect of the notification of the scheme under Section 68C of the Repealed Act and held that on publication of the approved scheme under Section 68A, the private operators were excluded, unless saved by the scheme under Section 68A, the private operators were excluded, unless saved by the scheme itself, to operate on an approved area or route by obtaining permits to run the stage carriage on the approved route under the scheme. In the absence of any express exemption in the scheme, the exclusion of the private operators to operate the stage carriage on the approved scheme is total and complete. It was only for the State

Government to take steps to put vehicles on approved schemes so as to avoid any inconvenience to the travelling public.

In Ram Krishan Verma & Ors. vs. State of U.P. & Ors. [(1992) 2 SCC 620] another Bench of two Judges had considered the scheme of Chapter IV-A of the Repealed Act and Sections 80 and 98 of the Act. It was held that the scheme published under Section 68D of the Repealed Act (Chapter VI of the Act) is a law and it has over-riding effect over Chapter IV of the Repealed Act (Chapter V of the Act). The scheme operates against everyone unless it is modified. It excluded private operators from the notified area or notified route or a portion thereof covered under the scheme except to the extent saved under the scheme itself. The right of the private operators to apply for and to obtain permits under Chapter IV of the Repealed Act (Chapter V of the Act) had been totally frozen and prohibited. The result was that on the approved nationalised route or area, the private operators were totally prohibited to obtain permits under Section 72 or renewal under Section 81 of the Act to ply their stage carriages. This ratio was reiterated by another Bench in Nisar Ahmad & Ors. vs. State of U.P. & Ors. [(1994) Supp. 3 SCC 460] holding that the approved scheme is a law by itself and everyone, whether or not party to the earlier order of this Court K.K. Verma's case, was bound by the law laid down and directions given by this Court under Article 142(2) of the Constitution.

It is seen that Chapter VI of the Act empowers STU to frame schemes which have over-riding effect, by operation of Section 98, on Chapter V and other laws. Section 101 with a non obstante clause gives power to the STU to operate additional services for the conveyance of the passengers on special occasions such as to and from fairs and religious gatherings. Section 102 empowers the State Government to modify or cancel the approved scheme only in the public interest. Section 103 gives exclusive right to the STU to apply for and obtain stage carriage permits or goods carriage permits or contract carriage permits in respect of a notified area or notified route or portion thereof. Section 104 prohibits STA or RTA to grant any permit except in accordance with the scheme. Thus private operators whose named permits were saved from the scheme, became entitled to operate their stage carriages subject to corridor restrictions of picking up and setting down the passengers enroute on the overlapped route.

It would, thus, be clear that there is no provision like Section 68F(1D) of the Repealed Act to obtain renewal of a permit saved under the scheme to private operators. In contrast, sub-section (2) of Section 103 gives power to the STA or RTA, on application made by the STU under Section (1) thereof, either to grant any other permit or reject a pending application or to cancel an existing permit or to modify the terms of an existing permit in the manner indicated in clause (c) of sub-section (2) of Section 103. It would, thereby, indicate the inconsistency with the provisions contained in Chapter IVA of the Repealed Act.

Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of the Parliament as if it had never been passed it, it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not an actual reality and which the law recognises and the court accepts as a reality. Therefore, in case of legal fiction the court believes something to exist which in reality does not exist.

It is nothing but a presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore, when Section 217(1) of the Act repealed Act 4 of 1939 in effect came to be non-existent except as regards the transactions, past and closed or saved.

In Crawford's Interpretation of Law (1989) at page 626, it is stated that "[An express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as a saving clause. Even existing rights and pending litigation, both civil and criminal, may be affected although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation". At page 627, it is stated that "[Moreover, where a repealing clause expressly refers to a portion of a prior Act, the remainder of such Act will not usually be repealed, as a presumption is raised that no further repeal is necessary, unless there is irreconcilable inconsistency between them. In like manner, if the repealing clause is by its terms confined to a particular Act, quoted by title, it will not be extended to an act upon a different subject". Section 6 of the GC Act enumerates, inter alia, that where the Act repeals any enactment, unless a different intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. In India Tobacco Co. Ltd. vs. The Commercial Tax Officer, Bnavanipore & Ors. [(1975) 3 SCC 512 at 517] in paras 6 and 11, a Bench of three Judges had held that repeal connotes abrogation and obliteration of one statute by another from the statute book as completely as if it had never been passed. When an Act is repealed, it must be considered, except as to transactions past and closed, as if it had never existed. Repeal is not a matter of mere form but is of substance, depending on the intention of the Legislature. If the intention indicated either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a case of total or pro tanto repeal.

When there is a repeal and simultaneous re-enactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. Such incompatibility would have to be ascertained from all relevant provisions of the new Act. Therefore, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to obliterate the Repealed Act and to get rid of certain obsolete matters.

On "Saving of rights acquired", in the Principles of Statutory Interpretation by G.P. Singh [(Sixth Edition) - 1996] at page 413, the learned author has stated that the effect of clauses (c) to (e) of Section 6 of GC Act is, speaking briefly, to prevent the obliteration of a statute in spite of its repeal to keep intact rights acquired or accrued and liabilities incurred during its operation and permit

continuance of institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such rights and liabilities. At page 418, the learned author has stated that the privilege to get an extension of a licence under an enactment is not an accrued right and no application can be filed after the repeal of the enactment for renewal of the licence. In Legislation and Interpretation by Jagdish Swarup (1974 Ed,) at page 539, it is stated that the power to lake advantage of an enactment may without impropriety be termed as a "right", but the question is whether it is a "right accrued". A mere right (assuming it to be properly so called) existing in the members of the community or any of them to take advantage of an amendment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued".

In Bishambhar Nath Kohil & Ors.. v. State of Uttar Pradesh & Ors. [AIR 1966 SC 573] a Constitution Bench of this Court was to consider application of Section 6 of the GC Act to Section 27 of the Administration of Evacuee Property Act, 1950. Regarding saving of rights accrued thereunder by operation of section 6 of the GC Act this Court, after an elaborate consideration, had held that by Section 58 (3) of the Administration of Evacuee Property Act the Legislature had not expressed any reservation in the application of that section and none can be implied. The order of the Deputy Custodian was declared final by operation of Section 30 (6) of Ordinance 1 of 1949, but the liability was subject to the provisions of sub-sections (1) to (5) of Section 30. If fictionally order is deemed to have been passed under Act 31 of 1950 (Administration of Evacuee Property Act) as if the Act were in operation on October 12, 1949, it is difficult to escape the conclusion that the order would be subject to the appellate or revisional jurisdiction of the authorities who have the appellate or revisional power by virtue of provisions conferring those powers and which must also be deemed to have been in force on the date when the impugned order was passed. It was held that Section 6 was inapplicable to revive the Act that became final.

The question, therefore, is: what rights were preserved by saving provisions in Section 217(2) of the Act? In Crawford's Statutory Interpretation it is stated under Section 322 at page 657 thus:

> "Often the legislature instead of simply amending a pre-existing statute, will repeal the old statute in its entirety and by the same enactment pre-existing law. Of course, the problem created by this sort of legislative action involves mainly the effect of the repeal upon rights and liabilities which accrued under the original statute.
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> Are those rights and liabilities destroyed or preserved? The authorities are divided as to the effect of simultaneous repeals and re-enactments. Some adhere to the view that the rights and liabilities accruing under the repealed act are destroyed, since the statute from which they sprung has actually terminated, even though for only a very short period of time. Others, and they seem to be in the majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the re-enactment neutralizes the repeal, thereby continuing the law in force without interruption. Logically, the former attitude is correct, for the old statute does cease to exist as an independent enactment, but all practical considerations favour the

> majority view. This is so even where the statute involved is a penal act." In Maxwell on the Interpretation of Statutes (12th Ed.) it is stated at page 17 that the effect of repealing Acts passed after August 30, 1889, is now dealt with by Section 38(2) of the Interpretation Act. Such repealing Acts are, unless the contrary intention appears, not to..."(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid".

In Sutherland Statutory Construction (3rd Edition) Vol. I by Horack, in paras 2043 to 2045, it is stated that:

> "Under common law principles of construction and interpretation all rights, liabilities, penalties, forfeitures and offences which are of purely statutory derivation and unknown to the common law are effaced by the repeal of the statute which granted them, irrespective of their accrual.
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> Likewise, where a common law principle is abrogated, its effective existence is destroyed both as to past actions and to pending proceedings. However, a right of a common law nature which is further embodied in statutory terms exists as an enforceable right exclusive of the statute declaratory of it, and therefore the right is not expunged by the repeal of the statute.
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> Since the effect of a repeal is to obliterate the statute and to destroy its effective operation in future, or to suspend the operation of the common law when it is a common law principle which is abrogated, any proceedings which have not culminated in a final judgment prior to the repeal are abated at the consummation of the repeal. When, however, the repeal does not contemplate either a substantive common law or statutory right, but merely the procedure prescribed to secure the enforcement of the right, the right itself is not annulled but remains in existence enforced by applying the new procedure.
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> Effect on vested rights Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceedings not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.

> In order to become vested, the right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition.
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> Effect up On inchoate rights Rights of action which are dependent upon a statute, and which are still inchoate and not reduced to possession or perfected by final judgment, are lost by the repeal of the statute from which they stem. This rule of construction is simply a restatement of the common law principle of construction that the repeal of a statute operates to divest all rights accruing under the repealed statute and all proceedings not concluded prior to the repeal, since inchoate rights are by definition not vested rights such as to escape the common law rule of effacement. The inchoate rights are but an incident to the statute and fall with its repeal." In Francis Bennion's Statutory Interpretation (Second Edition) it is stated at page 210 thus:
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> "Where an Act passed after 1978 repeals and re-enacts as enactment (with or without modification) then, unless the contrary intention appears, anything done, or having effect as if done, under the enactment repealed, in so far as it could have been done under the provision re-enacted, has effect as if done under that provision."

In Cardinal Rules of Legal Interpretation (3rd Edition) by Randall, A.E., 1924, it is stated at page 531-32 thus:

> "Their lordships... conceive that, in dealing with a statute which professes merely to repeal a former statute of limited operation, and to reenact its provisions in an amended form, they are not necessarily to presume an intention to extend the operation of those provisions to classes of persons not previously subject to them, unless the contrary is shown, but that they are to determine on a fair construction of the whole statute, considered with reference to the surrounding circumstances, whether such an intention existed."

Brown v. Mc Lachlan (1872), L.R. 4 P.C. 543, at p. 550; 42 L.J.P.C. 18, at p.23, Sir W. Colville, delivering the judgment of the Judicial Committee.

> "Where you have a repeal, and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, Aye or No. is there incompatibility between the two? And in those cases the judges, in holding that there was a saving clause large enough to annul the repeal, says that you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as pro tanto wiped out. That is settled by the cases of In re Busfield

(1886), 32 Ch. D. 123; 55 L.J. Ch. 467; and Hume V. Somerton (1890), 25 Q.B.D. 239; 59 L.J. Q. B. 420." In re R., (1906) 1 Ch.

730, at p. 736; 75 L.J. Ch.421, at p.423, Collins, M.R."

It is already seen that the operation of sub-section (1) of Section 217 is to obliterate the Act 4 of 1939 and any corresponding law in force in any State from operation with effect from 1st July, 1989. However, repeal shall not affect any right or liability acquired, accrued or incurred. Sub-section (2) enumerates and saves from the obliteration of Act 4 of 1939 and corresponding law by fiction with its non obstante clause. Ex abundenti cautela clauses (a) to (e) elaborate the enumeration of rights. They would apply to specific rights given to an individual upon the happening of one or other of the events specified in the statute. Clause

(a) preserves continued operation of any notification, rules, regulations, order or notice issued etc, and any appointment or declaration made etc, under the Repealed Act in force immediately before July 1, 1989. Those enumerated acts or actions shall be deemed to have been issued, made, granted, done or taken under the corresponding provisions of the Act which are not inconsistent with the provisions of the Act. In other words, Section 217 (2) (a) gives an elongated operation as regards all transactions, which being consistent with the provisions of the Act should be deemed to have been issued, made, granted, done or taken under the corresponding provisions of the Act. Existence of the corresponding provisions similar to the repealed provisions is a condition precedent. If the operation of the provisions in the Act is inconsistent and incompatible, it gets obliterated and the earlier provisions no longer revive or survive. If analogous provision in the Repealed Act does not find place in the Act, the rights accrued or acquired thereunder would not continue under the Act unless fresh rights are acquired under the Act.

By operation of clause (b), any certificate of fitness of a motor vehicle or its registration or licence issued or permit granted under the repealed enactments, shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed. In other words, a permit granted under the Repealed Act 4 of 1939 shall continue to have the same operation under the Act under the same terms and conditions and for the same period, as if the Repealed Act was in operation and as if the Act had not been passed. This is the fiction of law by which, though Act 4 of 1939 was wiped out, its operation gets revived. The intention, thereby, appears to be that the Act breaths life into the dead permits etc, and allows full play to the permits granted under the Repealed Act, even if inconsistent, till their period expired by efflux of time.

On expiry of the period of permit granted under Act 4 of 1939 or corresponding law what would be the consequence is the question. It is true, as contended by Shri Venugopal, that by operation of sub-section (4) of Section 217, read with clause (a) of sub-section (2) of Section 217, Section 6 of the GC Act steps in and the conjoint operation thereof leaves no manner of doubt that the notification issued, rules or regulations made, orders passed, notice issued, or any appointment or a declaration made, exemption granted or any confiscation made or any penalty or find imposed in or any other thing done or any other action taken under the repealed enactment in force immediately before such commencement shall, as far as it is not inconsistent with the provisions of the Act, be deemed to

have been correspondingly issued, made, granted, done or taken under the Act and their operation thereby gets saved by appropriate clause in Section 6 of the GC Act read with Section 217(2)(a) to (e) of the Act. In other words, proceedings initiated before Act 4 of 1939 was repealed, would be continued and concluded under the Act as if the Act was not enacted. However, four things would emerge from its operation. First, there must exist a corresponding provision under the Act pari materia with the Repealed Act; secondly, that the order or permit granted must exist and be in operation as on July 1, 1989- the day on which the Act had come into force: thirdly, it must not be inconsistent with the provisions of the Act; and fourthly some positive acts should have been done before July 1, 1989 to further secure any right. All the four conditions should be satisfied as conditions precedent for application of Section 6 of the GC Act by operation of sub-section [4] of Section 217 and then clause [a] of sub-section [2] of Section 217 steps in and starts operation thereof. We are concerned with permits, let it be said that a permit is preceded by an order granting permit by the concerned RTA or STA, as the case may be, under the Repaled Act. The said order stands merged with the grant of permit and gets exhausted.

This may be angulated from yet another legal perspective, namely, consequences that would flow from the meaning of the word `renewal' of a permit under Section 81 of the Act. Black`s Law Dictionary defines the word `renewal' at page 1296 thus:

> "The act of renewing or reviving. A revival or rehabilitation of an expiring subject; that which is made anew or re-established. The substitution of a new right or obligation for another of the same nature. A change of something old to something new. To grant or obtain extension of;"

In P. Ramanatha Aivar's "The law Lexicon" [Reprint Edition 1987], the word `renewal' is defined at page 1107 to mean "a change of something old for something new. The renewal of a `license' means a new license granted by way of renewal". The renewal of a negotiable bill or note is regarded simply as a prolongation of the original contact. The office of a "renewal", as it is termed, of a life policy, is to prevent discontinuance of forfeiture.

In Provash Chandra Dalui & Anr. v. Biswanath Banerjee & Anr. [[1989] Supp. 1 SCC 487 at 496] in para 14, this Court drew the distinction between the meaning of the words extension and renewal. It was held that a distinction between extension and renewal is chiefly that in the case of renewal, a new lease is required while in the case of extension the same lease continues in force during additional period by the performance of stipulated act. In other words, the word `extension' when used in its proper and usual sense in connection with a lease, means prolongation of the lease.

It is settled law that grant of renewal is a fresh grant though it breaths life into the operation of the previous lease or licence granted as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal. The right to get renewal of a permit under the Act is not a vested right but a privilege subject to fulfillment of the conditions precedent enumerated under the Act. Under Section 58 of the Repealed Act, renewal of a permit is a preferential right and refusal thereof is an exception. But the Act expresses different intention. Sections 66, 70, 71 and 80 prescribe procedure for making application and compliance of the

conditions mentioned therein. Existence of the provisions of the Act consistent with the Repealed Act is a pre-condition. Grant of renewal under Section 81 is a discretion given to the authority [STA or RTA] subject to the conditions and the requirement of law. Discretion given by a statute connotes making a choice between competing considerations according to rules of reason and justice and not arbitrary or whim but legal and regular. Sections 70 and 71 read with Section 81 do indicate that grant of permit or renewal thereof is not a matter of right or course. It is subject of rejection for reasons to be recorded in support thereof. Therefore, right to renewal of a permit under Section 81 is not a vested or accrued right but a privilege to get renewal according to law in operation and after compliance with the pre-conditions and abiding the law.

In Ambika Quarry Workis v. State of Gujarat [[1987] 1 SCC 213] this Court was to deal with right to renewal of a mining lease under the Gujarat Mines and Minerals Concessions Rules. When the renewal of the lease was not granted, due to statutory embargo created by Section 2 of the Forest [Conservation] Act, 1980, this Court had held that though the right to renewal was in accordance with the rules, with the interposition of the Act for conservation of the forests, it puts an embargo on the right to renewal. Therefore, the refusal to grant renewal of lease was upheld.

In Rural Litigation and Entitlement Kendra v. State of U.P. [[1989] Supp. 1 SCC 504 at 523-24] after considering the above ratio, it was held that though the lessees of the mines were entitled to apply for renewal as per the law and clauses in the lease, this Court prohibited obtaining of renewals applying Section 2 of the Forests [Conservation] Act, 1980.

In State of M.P. & Ors. v. Krishnadas Tikaram [[1995] Supp. 1 SCC 587] this Court had held that it is settled law that renewal is a fresh grant and must be granted consistent with law in operation as on that date. In that case, it was held that renewal of mining lease in the forest area for extraction of minerals under Mining and Mineral Concessions Rules should be consistent with Forest (Conservation) Act, 1980. Section 2 mandates the State Government, renewal granted without prior approval was subsequently cancelled. When its validity was questioned the High Court set aside the order. On appeal, this Court reversed the High Court's order and had held that the Government was not precluded to cancel the renewal of the lease granted without obtaining prior approval of the Central Government. The order of cancellation was, therefore, upheld.

There is a distinction between right acquired or accrued, and privilege, hope and expectation to get a right, as rightly pointed out by the High Court in the impugned judgment. A right to apply for renewal and to get a favorable order would not e deemed to be a right accrued unless some positive acts are done, before repeal of Act 4 of 1939 or corresponding law to secure that right of renewal. In Gujarat Electricity Board vs.Shantilal [AIR 1969 SC 239], this Court had pointed out that before Section 71 of the Electricity Supply Act was amended the appellant had issued a notice under Section 7 thereof, exercising the option to purchase the undertaking. It was held that a right to purchase the electrical undertaking which has accrued to the Electricity Board was saved by Section 6 of the GC Act.

So, if no action under the Repealed Act was set in motion before July 1, 1989, by a valid application for renewal of a permit, there was no right acquired or accrued to pursue the remedy under the Act.

The privilege to obtain renewal of a permit is not an accrued right. Section 58(2) of the Repealed Act gives, as stated super, preferential right to a holder of a permit for renewal thereof. Section 71 of the Act gives preferential right in favour of STU for grant of permit in Chapter V which is not available under the Repealed Act. Therefore, even for grant of a permit or a renewal under Section 72 or 81, the STU is entitled to preferential right over the private citizens. Thereby, the Act manifests intention inconsistent with and incompatible to that in Chapter IV of the Repealed Act. Similarly, even on the approved routes under a scheme framed in Chapter IVA, an exception has been carved out in the scheme with a non obstante clause in favour of STU, which is a self-operatiive law by itself. The rights of the existing operators for renewal thereof under Section 68F(1D) under the repealed Act were saved. But, under the Act, Chapter VI does not speak of renewal of the permits to the private operators, though permits were saved in the scheme itself. In other words, Chapter VI manifested inconsistency in its operation from the law in Chapter IVA of the Repealed Act. Similarly, other provisions are inconsistent with those in Act 4 of 1939 which exist in the Act as are apparent but they are not relevant for our present purpose and hence need no elaboration. Therefore, clause (a) of sub-section (2) would not get attracted, even if it were to apply to grant of permit being a "thing done" as contended by Shri Venugopal. So, any permit issued to operate a stage carriage under the Repealed Act would survive, by virtue of clause (b) of sub- section (2) of Section 217 of the Act by fictional operation of law; and this would be on the same conditions and for the same period mentioned under the Repealed Act, as if the Act was not enacted. Any other view would tantamount to allowing the Repealed Act to remain in operation in perpetuity simultaneously with the operation of the Act. Both cannot co-exist in the same shelter.

In State of Punjab v. Hohar Singh [1955 SCR 893] the facts were that the respondent filed a claim as an evacuee under EP (Registration of Land Claims) Act, 1948. The claim was investigated into and it was found to be false; it was held to be an offence under the Act. At the trial, on his confession, the respondent was convicted and was sentenced to imprisonment. On suo motu revision, the District Magistrate found the sentence to be inadequate and referred the case to the High Court to be dealt with under Section 437, Cr.P.C. The High Court found that since the Ordinance was repealed, he could not be convicted under Section 7 of the Act. This Court, on appeal, reversed the decision and upheld the conviction applying Section 6 of the GC Act. Interpreting that section, this Court had held that the words "anything done" occurring in Section 11 of 1948 Ordnance did not mean act done by a person but an official act done by the authority in exercise of the powers conferred by or under the ordinance. Far from helping the appellants, the ratio would apply to official acts done or orders issued etc, covered by Section 217(2)(a) of the Act. As stated earlier, after permit was in fact issued, the order passed by STA or RTA outlived its purpose and grant of the permit and its operation was saved to the extent provided in clause (b) of Section 217 (2).

The ratio of M/s. Universal Imports Agency and Anr. v. The Chief Controller of Imports and Exports & Ors. [(1961) 1 SCR 305] also is not of assistance to the appellants. Therein, before the Government of India issued notification applying the French Establishments' (Application of Laws) Order, 1954 to the territory of Pondicherry, the appellant had entered into a contract with the foreign buyers for the import of the goods which, after the said order came into force, were imported into Pondicherry. The question therein was whether Section 6 of the GC Act would apply, Majority of three judges, dissented by minority opinion of two judges, had held that the words "things done" in para 6 of the

French Establishments' (Application of Laws) order was comprehensive enough to take within its ambit not only things done but also the effect of the legal consequences flowing therefrom. The ratio is not at all applicable to the facts of this case.

We, therefore hold that grant of renewal of the stage carriage permit should necessarily be preceded by a grant of a permit to stage carriage under Section 72, in accordance with the procedure laid down in Sections 70 and 71. This should be made before the expiry of the period prescribed in the permit granted under the Repealed Act. Therefore, for stage carriage permits granted under Chapter IV of the Repealed Act, if they stand to expire or expired after 1st July, 1989, without any pending application for renewal having been made under Section 58 as on 1st July, 1989, fresh applications under Section 70 should be filed and after consideration under Section 71, permits be obtained as per law under Section 72. If there is any delay to obtain permits pending consideration, by operation of Section 76, to avoid hiatus in continued operation of providing stage carriage service, section 87 gives power to grant temporary permit without following the procedure laid down in Section

70. In Mithilesh Garg & Ors vs. Union of India & Ors. [(1992) 1 SCC 168], this Court had laid down different criteria for grant of inter-region, intra-region and interstate permits under the Act under Section 88 and 80 of the Act which did not find place in the Repealed Act. It was held that such distinction was neither discriminatory nor violative of Article 14 of the Constitution. Thus considered, the argument of arbitrariness, discrimination or avoidable inconvenience to the holders of permits etc, under the Repealed Act and to the travelling public would be hypothetical and without force.

The appeals arising out of SLP Nos. 924/96, 1913/96, 27355/95 relate to renewal of stage carriage permits of the appellants, whose permits were saved under the nationalised schemes. It is an admitted position that before the Act had come into force on July 1, 1989 they had their permits saved by the schemes approved and published under Chapter IVA of the Repealed Act and renewable under Section 68F (1D) of the Repealed Act and were renewed under Section 81 of the Act without obtaining fresh permits under the Act. The extreme contention of Sri S.K. Dhaon was that the definition of "permit" under Section 2(31) of the Act is so wide as to include permits granted under the Repealed Act and the approval and publication of the schemes under Section 68D of Chapter IVA of the Repealed Act stands nullified since there is no saving thereof under the Act. Therefore, every one is free to obtain permits under the nationalised scheme after expiry of the period for which the permit was granted under the Repealed Act. We find it difficult to give acceptance to the extreme contention. It is settled law that the scheme approved under Chapter IVA, which is equivalent to Chapter VI of the Act, is a self-contained and self- operative scheme and is a law by itself. The scheme operates to the exclusion of private operators with non obstante clause that the STU should obtain permits to run stage carriages in the notified area, routes or a portion thereof to provide coordinated efficient, adequate and economical road transport service. Thereby the right to apply for and obtain a stage carriage permit has been frozen to all private operators, except as saved under the scheme itself. Until the scheme gets modified or cancelled by the State it would continues to be in operation. We find no inconsistency under the Repealed Act and the Act in this behalf, Resultantly, all schemes remain operative under Section 217 (2) (a) of the Act.

The question, therefore, is: whether a private operator saved under the scheme is not liable to get permits under Section 72 and renewal of the permits under Section 81 of the Act? It is true that Section 68F (1D) and Section 68F (1F) of the Repealed Act had prescribed that renewal of the permits granted to the private operators and STU should be renewed under the scheme; similar provision do not find place in Chapter VI of the Act. Rules do prescribe procedure to apply for renewal by the private operators as well as STU but the rules or procedure do not confer substantive right to renewal of the permits granted under the scheme; when Chapter VI is sub silentio, rules cannot travel beyond the Act.

The question, therefore, is: whether the named holder of a specified stage carriage permit has the right of renewal under the Act after the expiry of the period mentioned in the permit granted under the Repealed Act? Did the Parliament intend to put an end to and denude the right of a private named operator to operate the stage carriage; or to that extent the right to apply for and obtain permit under Sections 70 to 72 or renewal under Section 81 was preserved?

Two views are plausible under the scheme of the Act. The first is that after the expiry of the permit or renewed permit under the Repealed Act, the named private operator saved under the scheme gets denuded of his right of renewal of his permit under the Act, since "permit" defined under Section 2(31) would mean permit granted under the Act, which occasion does not arise as the field, occupied by the exclusive right to operate stage carriages was given to STU. Thereby, he ceases thereafter to have any right to ply stage carriages, though saved under the self operative scheme which continues to be in existence after the Act came into force. The other view is that the rights of the private named operators whose specified permits were saved under the respective schemes, were not expressly taken away under the Act. Being private operators, they would be entitled to avail of the right and remedy given in Chapter v of the Act, with exclusion of other private competitors. Thereby they should apply for and obtain permit afresh under Section 72 and renewal thereafter under Section 81. In this behalf, it is relevant to note the contention of S/Shri Venugopal and Salve. Their contention is that in the scheme, such named operators whose specified permits were mentioned in the scheme alone were given exclusive rights to ply their stage carriages on the named routes subject to corridor restrictions mentioned in the scheme. Other persons whose permits were nationalised were paid compensation under the Repealed Act or under Section 105 of the Act but the appellants were not paid compensation as their permits were saved. By operation of Section 217 (2) (e) and Section 100 of the Act, even pending schemes should be finalised under the Act within the limitation prescribed therein. Until its finalisation, the existing operators are allowed to ply their vehicles and to obtain temporary permits. This would indicate the legislative intention that the Act did not intend to destroy the rights, saved under the respective schemes, of the named operators in respect of the specified permits. The contention of Mr. Pramod Swarup for U.P.S.R.T.U. is that after the expiry of the period mentioned in the permits granted to the named operators of the specified permits, they lost their right to renewal of their permits since the right to renewal, similar to Section 68F (1D),does not find place in Chapter VI. The grant of renewal to them, unless modified by the scheme under Section 102 of the Act, is inconsistent and, therefore, the their permits. The exclusive right, thereby, was given to the STU to ply their stage carriages, goods carriages or contract carriages so as to avoid inconvenience and hardship to the travelling public.

After giving careful and anxious consideration to the respective contentions, we find that there is some force in the contention of the respective counsel for the appellants. It bears repetition to state that the approved scheme under the Repealed Act or in the Act is a self-contained and self- operative scheme. It is a law by itself. The schemes published under the Repealed Act, as held earlier, are saved by Section 217 (2) (a) of the Act. Therefore, until they are modified or cancelled under Section 102, the scheme should continue to be in operation in the notified area, route or part thereof. The right to apply for and obtain permit in the notified scheme was totally frozen to the private operators giving exclusive right to the STU to apply for and obtain permits to run the stage carriages or additional service under Section 101 of the Act on the notified area, route or a part thereof and none else. With a non obstante clause in Section 101, the right to apply for and obtain temporary permits under Section 87 by private operators was taken away. There is no need for STU to obtain such permits, as an intimation to concerned RTA of its providing such additional service on special occasion like fair or religious gatherings for conveyance of passengers, is sufficient. Yet the scheme itself saved and preserved the rights of the named existing operators in respect of over lapping routes in the specified permits, subject to the corridor restrictions of picking up and setting down the passengers en route the prescribed prohibited route. They became entitled to run their stage carriages subject to the law. Though, their permits are saved, the named operators being private operators, the Parliament appear to have though that there was no necessity to expressly retain in Chapter VI itself there right of renewal as the same was already provided in Section 81 of the Act corresponding to Section 68F(1D) of Chapter IV-A of the Repealed Act. The Reason appears to be obvious. Every private operators falls within the field covered by Chapter v of the Act. It would seem that the Parliament is of the view that the named operators, being saved under the schemes, are entitled to apply for and obtain necessary permit or renewal thereof to ply their stage carriages only on ovrelapped routed subject to the corridor restrictions mentioned in the scheme itself. It may be stated that we do not find any express indication of their rights being taken away under the Act; nor do we find it by necessary implication in that behalf and to that effect. This view does justice also to all concerned.

As far as the STU is concerned, they having had the monopoly to ply stage carriages, goods carriages, contract carriages or special services in the notified areas or route or part thereof under the scheme, it was though unnecessary to bother them to obtain renewal of permits for of stage carriages etc. Section 101 itself provides for such an intention. Resultantly, the Legislature appears to have obviated the need to obtain periodical renewals of permits for stage carriages etc, run by the STU. Parliament was aware of the need to obtain the renewal of permits by the STU under Section 68F (1F) of the Repealed Act and absence of such a provision in the Act is further eloquent and self-explanatory.

In Krishan Kumar Vs. State of Rajasthan & Ors. [(1991) 4 SCC 258], a contention was raised that since Section 100(4) of the Act prescribes limitation within which the State Government should here and consider the objections on the draft scheme, finalise the scheme and publish the same in the official Gazette, after the Act had come into force, the limitation of one year stood lapsed. Though Section 217(2)(e) empowers the State Government to finalise the pending draft schemes, they stood lapsed from the date on which draft scheme was published. The contention was rejected by this Court for the obvious reason that the Repealed Act did not prescribe any limitation to finalise the

draft scheme as indicated in sub-section (4) of Section 100 of the Act. As years rolled by from the date of publication of draft scheme for finalisation, the Parliament for the first time prescribed limitation in Section 100(4) putting a fetter on the exercise of the power of the Government in approving the draft scheme and publication thereof after complying with the requirements of law. The right of the private operators and the remedy of finalisation of the draft scheme were harmoniously interpreted by this Court and it held that the limitation of one year starts running from the date the Act had come into force, namely, July 1,1989. We are of the view that same harmonious interpretation is required to be adopted in this case also. Applying the same harmonious interpretation, we hold that the rights of named private operators to apply for and obtain permits and renewal of the specified stage carriage permits are saved and they alone are eligible to avail of that right and remedy under Chapter V of the Act, while preserving the monopoly of the STU in Chapter VI.

In Chapter V, permits are required to be obtained on non-nationalised routes. The STU also has the right to apply for and obtain permits to run the stage carriages, goods carriages or contract carriages on permits, as the case may be, and in some instances the preferential right under the Act is given to the STU. In respect of permits had under the Repealed Act or the Act, the need to apply for and obtain renewals of the stage carriage permits, goods carriages or contract carriage permits for plying on non- nationalised routes was to comply with the procedure prescribed in Chapter V, which should be adhered to. This is in relation to non nationalised routes only. But as regards the approved schemes, in Chapter VI or continued schemes saved by section 217(2)(a) read with sub-section (4) read with Chapter IVA of the Reopeaked Act, there is no need for STU to obtain periodical renewals of permits of stage carriages, contract carriages, or goods carriages in respect of the notified area, route or portion thereof, notwithstanding anything contained in Chapter V. The STU retains its exclusive right to ply the stage carriages or special service or goods carriage or contract carriage on the notified area or route or part thereof, until the scheme is duly modified or cancelled in accordance with law prescribed in Section 102 of Chapter VI.

It is required to be stated that along with the application under Section 70 filed for grant of permit under Section 72 or renewal under Section 81 made by the named holder of a specified permit in an approved scheme, he should enclose an authenticated copy of the approved scheme, the details of the route on which he was plying his stage carriage with corridor restrictions. The RTA or STA, as the case may be, should verify the original scheme under which the named operator, whose specified permit was saved, whether he is entitled to ply the stage carriage in approved scheme with the condition of the corridor restrictions imposed in the notified scheme and if so to what extent. What is the duration of his right saved in the approved scheme? Whether he had plied his stage carriage on complying with the law in force? His right to permit under Section 72 or renewal under Section 81 cannot be higher than the original right saved in the approved scheme. The STU also should be heard in that behalf. On consideration of these and all other relevant facts in relation to grant of stage carriage permit or renewal thereof, the appropriate authority may grant or reject. In the later event, for reasons to be recorded in support of the rejection.

In Mithilesh Garg's case (supra) a Bench of three Judges considered the right of the existing operators in conformity with Article 19(1)(g) of the Constitution and the procedure prescribed under

the liberal policy for grant of permits to the new entrants, while continuing the same right to existing operators under the new provisions in the Act. It was harmoniously interpreted and this Court had held that there was no cause for complaint by the existing operators when the liberal policy had given right to apply for and obtain permits under Chapter V on the non-nationalised routes to augment facility to the travelling public. Section 104 does not stand in the way of the named private operators whose specified permits were/are saved in that behalf. On the contrary, it would say "except in accordance with the provisions of the scheme".

Thus considered, we are of the view that the rights of the existing named operators saved in the appropriate approved schemes in respect of specified permits were not destroyed. By necessary implication of Section 104, they were saved. They became entitled to avail of their right to apply for grant of permit in accordance with the procedure prescribed under Sections 70 and 71 and to obtain permit under Section 72, before the expiry of the permit or renewed permit saved under the approved scheme and should obtain permit afresh to ply their stage carriages before expiry of the period mentioned therein; periodical renewals from time to time should be obtained under Section 81 of the Act in accordance with the operation of the law. The RTA or STA, as the case may be, should consider and may grant permits or renewal of permits as per law or rejection thereof for reasons to be recorded in that behalf.

It is true that some renewals of stage carriage permits to the holders of permits or renewed permits under the Repealed Act were granted under Section 81. Some of them are still in operation. With a view to prevent hiatus in operational efficacy we would declare that though renewals of state carriage permits were granted under Section 81, they must be deemed to be temporary permits granted under Section 87, till regular permits are granted or refused. The ratio of Gurucharan's case (supra), does not help the appellants. Therein the application for renewal of stage carriage permit under section 58 (2) of the Repealed Act was pending consideration as on 1st July, 1989. Consequently, Section 6 of the GC Act saved its operation. This Court had, therefore, held that applications for renewal filed under Section 58 of the Repealed Act must be disposed of under section 80 read with section 81 of the Act. However, it is stated that disposal must be taken to be, not of a permit granted under the Act, but one under deemed fiction. There would be no further fiction of law created under the Act to be a deemed renewal of permit under the Act.

In Quillon's case (supra) this Court did not have the occasion to consider the effect of section 6 of the GC Act and clause (a) of sub-section (2) of Section 217 since the case fell under clause (b). Therein, the proviso to unamended Section 71(1) prohibited the Society to obtain a permit. Consequently, it could not obtain renewal of stage carriage permit, being inconsistent with the provisions of the Act. It was held that the stage carriage permit issued under the Repealed Act would remain operative for the period for which it was granted as if the Act had not been passed. After its expiry, the appellant therein was required to obtain a permit under Section 72 of the Act. Thereby, it was held that the Society was not entitled to the renewal under Section 81 of the Act. In view of the consideration of the operation of the relevant provisions mentioned herein before, there is no conflict between Gurcharan Singh's case and Quilon's case. The interpretation in Quilon's case is also consistent with the consideration herein before made.

The next contention of Shri Venugopal is that the Act intends that all permits issued under the Repealed Act would be continued under the Act and be given effect in toto so long as such of those permits or certificates or licences are not inconsistent with the provisions of the Act. To that extent, their operations are saved giving limited operation under clause (b) of sub-section (2) of Section

217. However, notifications etc, issued under the Repealed Act and saved by clause (a) of sub-section 217, as mentioned earlier, are distinct from the permits issued in furtherance of the orders passed by the STA or RTA, as the case may be. The further contention that such a construction creates and brings about invidious discrimination offending Article 14 of the Constitution is without force. Section 217(2)(a) of the GC Act read with Section 217(4) of the Act manifest the distinction between the acts done or actions taken consistent with the previsions of the Repealed Act but inconsistent t with the Act. The Act saves only acts done or actions taken etc. Which are consistent with the provisions. By implication, all inconsistent acts done or actions taken, except those completed and closed, would not be considered to be done or taken under the Act and consequently could not be operative under the Act. They are obliterated completely from statute as if they never existed except to the extent of limited operation provided in the appropriate clauses in sub-section (2) of Section 217 of the Act.

Accordingly, we hold that the named transport operators whose permits were saved in the relevant scheme shall apply for permits under Section 70 and 71 and obtain permits afresh under Section 72 of the Act before the expiry of the period mentioned in the permit issued either under Section 47 or Section 48 or renewal under Section 58 or Section 68F(1D) of the Repealed Act. No third party/private operators are entitled to apply for permits on the same notified route or part thereof, nor are they entitled to compete with them for grant of permit, since the right of all other private operators to apply for and operate in the approved notified area, route or a part thereof, has been frozen. The right is reserved only in relation to the named operators and that too for specified permit, and none else. Along with the application under Section 70 filed for grant of permit under Section 72 or renewal under Section 81 made by the named holder of a specified permit in an approved scheme, he should enclose an authenticated copy of the approved scheme, the details of the route on which he was plying his stage carriage with corridor restrictions on over lapping routes. The RTA or STA, as the case may be, should verify the original scheme under which the named operator, whose specified permit was saved, whether he is entitled to ply the stage carriage in the approved scheme with the condition of the corridor restrictions on the notified scheme and if so to what extent. What is the duration of his right saved in the approved scheme? Whether he had plied his stage carriage on complying with the law in force? His right to permit under Section 72 or renewal under Section 81 cannot be higher than the original right saved in the approved scheme. The STU also should be heard in that behalf. On consideration of these and all other relevant facts in relation to grant of stage carriage permit or renewal thereof, the appropriate authority may grant or reject; in the later event, for reasons to be recorded in support of the rejection. The authorities should consider their applications in accordance with the law and the prescribed procedure and may grant new permits under Section 72 and later on before the expiry thereof, to renew it in accordance with the procedure prescribed in Section 80 and 81, that too on compliance with law, until the scheme is duly modified or cancelled in accordance with law. We reiterate that this right is available exclusively to the named private operators and that too in respect of the specified permits and with

same restrictions continued in the scheme and none else and no more.

Since the appellants had obtained permits by mistake of the law and misconception of law on the part of the competent authorities applied under Section 81 and had been granted renewal of their respective permits under Section 81 after July 1, 1989, such grant of renewal of the permits should be treated to be temporary permits under Section 87 of the Act. Therefore, the private operators, be they covered by Chapter V or VI, should apply for and obtain afresh permits before the expiry of the period mentioned in their respective permits or renewed for consideration under Section 71 and grant under Section 72 of the permits afresh consistently with Section 2(31) of the Act. Such permit alone would be a permit defined in Section 2 (31) of the Act. Thereafter, before expiry thereof, they shall apply for and the concerned STA/RTA person authority may grant or refuse renewals of permit for reasons to be recorded under Section 81 of the Act.

This interpretation of the law would relieve undue hardship to all the operators and at the same time it would also be consistent with the scheme of the Act to subserve the rights and protection provided under the Act so as to avoid rigour in the operation of the law.

Thus considered, for the reasons given above, the view taken by the High Court is in conformity with law but subject to above modification in the judgment.

The appeals and the writ petition are accordingly disposed of but, under the circumstances, without costs.