Dosa Satyanarayanamurty Etc vs The Andhra Pradesh State Roadtransport ... on 8 September, 1960

PETITIONER:
DOSA SATYANARAYANAMURTY ETC.

Vs.

RESPONDENT:
THE ANDHRA PRADESH STATE ROADTRANSPORT CORPORATION

DATE OF JUDGMENT:
08/09/1960

BENCH:

ACT:
Motor Vehicles-Nationalisation of road transport services-Preparation and enforcement of schemes-Constitutional validity of enactment-Varying frequency of services, if variation of 'the scheme-Validity of rule-Motor Vehicles Act, 1939 (IV of 1939), as amended by Act 100 of 1956, Ch. IV, ss. 68C, 68E-Andhra Pradesh Motor Vehicles Rules, r. 5-Constitution of India, Arts. 19 (1)(g), 19(6)(ii), 14.

HEADNOTE:
These petitions by certain stage carriage permit-holders for appropriate writs quashing seven schemes for nationalisation of road transport services in West Godavari District, approved and enforced from different dates by the Government of Andhra Pradesh, called in question the constitutional validity of Ch. IVA of the Motor Vehicles Act, 1939, as amended by Act 100 of 1956, and the validity of r. 5 of the Andhra Pradesh Motor Vehicles Rules framed by the State Government under s. 68(1) of the Act and the note in terms of the said rule appended to the schemes which was said to be inconsistent with the Act and was as follows:-
"The frequency of services of any of the notified routes or within any notified area shall, if necessary, be varied having regard to the traffic needs during any period."
Held, that in view of the decision of this Court in H. C.

643

Narayanappa v. The State of Mysore, it was no longer open to the petitioners to contend that the provisions of Ch. IVA of the Motor Vehicles Act (IV of 1939), as amended by the Central Act 100 of 1956, were ultra vires the powers of the Parliament.
H. C. Narayanappa v. The State of Mysore, [1960] 3 S.C.R. 742, followed.

Nor was it correct to contend that Ch. IVA of the Act was invalid on the ground that it infringed Art. 19(i)(g) of the Constitution and was not saved by Art. 19(6) as the powers conferred on the State by s. 68C of the Act exceeded the limits of Art. 19(6)(ii) of the Constitution. Article 19(6)(ii) is couched in very wide terms, the word 'service' used by it is wide enough to include all species of motor service and it does not in any way limit the States' power to confer on itself a monopoly in respect any area in exclusion of any person or persons.

The only classification that Ch. IVA of the Act makes is between the State Transport Undertaking and private transport undertakings, whether carried on by individuals or firms or companies, and that classification is reasonably connected with the object it has in view. It was not, therefore, correct to say that it contravenes Art. 14 of the Constitution. That Chapter does not confer any arbitrary and discriminatory power upon the State Transport Undertaking nor does the quasi-judicial procedure prescribed by it seek to cover such power. Any mala fide or collusive exercise of the power, therefore, in deprivation of an individual's rights can only be a ground for quashing a particular scheme alone but not for declaring the chapter void.

Since that chapter provides a complete and satisfactory machinery for reasonably regulating the exclusion of all or some of the private operators from a notified area or route it requires no liberal construction.

Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corporation, [1959] SUPP. 1 S.C.R. 319, referred to.

Saghir Ahmad v. The State of U. P., [1955] 1 S.C.R. 707, considered.

Official bias inherent in the discharge of a statutory duty, as has been pointed out by this Court, is distinct from personal bias for or against any of the parties. Since in the instant case, the State Road Transport Corporation was neither legally nor factually a department of the State Government and the State Government in deciding the dispute between the said undertaking and the operators of private buses was only discharging its statutory function, no question of official bias could arise.

Gullapalli Nageswara Rao v. The State of Andhra Pradesh, [1960] 1 S.C.R. 580 and H. C. Narayanappa v. The State of Mysore, [1960] 3 S.C.R. 742, considered.

644

The observations made by this Court in Srinivasa Reddy v. The State of Mysore, in regard to piecemeal implementation of a scheme were directed against any abuse of power by way of discrimination as between operators and operators in respect of a single scheme. Since the seven schemes in question were intended to avoid the vice inherent in piecemeal implementation of a single scheme and were meant to be implementated in their entirety from different dates,

those observations did not apply to them.
Srinivasa Reddy v. The State of Mysore, [1960] 2 S.C.R 130, explained.
There can be no doubt that r. 5 of the Andhra Pradesh Motor Vehicles Rules in conferring on the State Transport Undertaking the power to vary the frequency of services, gave it the power to effect a substantial modification in the scheme permissible only under s. 68E of the Act, and as such the rule must be declared void. But since the note appended to the schemes in pursuance of the rule is severable from the schemes, it should be deleted and the schemes must be declared valid.
The word 'route' in s. 68C of the Act does not refer to a preexisting route. It is permissible under that section to frame a scheme in respect of any area or route or any portions thereof, or a new route, since there is no inherent inconsistency between an 'area' and a 'route'.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 76, 217 to 228 of 1960.

Petitions under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

A. V. Viswanatha Sastri and T. V. R. Tatachari, for the petitioners (In petitions Nos. 76, 87, 93-104 and 217-228 of 1960).

T. V. R. Tatachari, for the petitioners (In petitions Nos. 72 and 229-233 of 1960).

D. Narasaraju, Advocate General for the State of Andhra Pradesh, P. R. Ramchandra Rao and T. M. Sen, for the respondents (In all the petitions).

1960. September 8. The Judgment of the Court was delivered by SUBBA RAO J.-These petitions are filed under Art. 32 of the Constitution for the enforcement of the petitioners' fundamental right to carry on the business of motor transport in West Godavari District in the State of Andhra Pradesh by the issuance of writs of certiorari or any other appropriate writs, orders or directions to quash the schemes of road transport services as finally approved by the Government of Andhra Pradesh on March 21, 1960, and for other incidental reliefs. In exercise of the powers conferred by s. 68C of the Motor Vehicles Act (IV of 1939), as amended by the Central Act 100 of 1956, (hereinafter called the Act), Shri Guru Pershad, the Chief Executive Officer, Andhra Pradesh State Road Transport Corporation, (hereinafter called the Transport Corporation) published seven proposals dated December 7, 1959, in the Andhra Pradesh Gazette dated December 17, 1959, propounding seven schemes for the nationalization of the road transport in respect of different parts of West Godavari District in that State. Under that notification objections from the public and affected parties were invited to be filed within 30 days of the publication thereof More than 3000 objections were received by the Government against the said schemes. After considering the objections, the

Government issued notices to the objectors or their representatives and the representatives of the Transport Corporation informing them of the time, place and the dates of hearing. On the notified dates, namely, March 10, 11 and 12, 1960, 200 objectors were present and most of them were represented by Advocates. The Transport Corporation was also represented by its Chief Executive Officer and its legal advisers. The Minister in charge of the portfolio of transport held an enquiry, considered the conflicting arguments advanced, gave definite findings on the points urged, rejected all the objections but one and approved the schemes with a slight modification. The seven schemes were directed to be put in force from different dates which were given in the order made by the Minister. The aggrieved operators who were not satisfied with the order of the Minister filed the present petitions for the said reliefs. Shri A. V. Viswanatha Sastri, learned counsel for the petitioners, raised before us the following points.

(1)The provisions of Ch. IVA of the Act are ultra vires the powers of Parliament because they are within the exclusive legislative field of the States. (2) The provisions of Ch. IVA of the Act infringe the fundamental rights of the petitioners under Art. 19(1)(g) of the Constitution and are not saved by el. (6) of the said Article. (3) The provisions of Ch. IVA are also violative of Art. 14 of the Constitution. (4) The order of the Government confirming the schemes is vitiated by the doctrine of bias and, therefore, void. (5) Though in fact seven schemes are framed, in effect they are component parts of one scheme and that device has been adopted to circumvent the judgment of this Court in Srinivasa Reddy v. The State of Mysore (1). (6) The schemes- are void inasmuch as they area prepared and published by the Chief Executive Officer who was not one of the persons who could act on behalf of the Transport Corporation under s. 13 of the Road Transport Corporations Act. (7) The schemes as propounded by the Transport Corporation did not give the number of vehicles proposed to be operated in each route as it should have given under r. 4 of the Andhra Pradesh Motor Vehicles Rules (hereinafter called the rules) and the modification made by the Minister directing the Transport Corporation to do so does not also comply with the requirements of the said rule. (8) In exercise of the power conferred under r. 5 of the-Rules, the State Transport Under, taking conferred upon itself power to vary the fre- quency of the services and that rule and the note made pursuant thereto are inconsistent with the provisions of the Act and, therefore, void. (9) The proposed schemes include three new routes and that is illegal as the said Transport Undertaking has no power to include any new routes in a scheme proposed by it. Though many other questions are raised in the petitions, they are not pressed before us. Learned Advocate General for the State of Andhra Pradesh sought to sustain the schemes as approved by the Minister in their entirety.

(1) (1960] 2 S.C.R. 130.

We shall now proceed to deal with the contentions in the order they were raised.

Re. (1) : The first contention does not now merit a detailed consideration as it has been considered and rejected by this Court in H. C. Narayanappa v. The State of Mysore (1). In that case, after considering the question, Shah, J., speaking for this Court, observed:

> "We are therefore of the view that Chapter IVA could competently be enacted by the Parliament under entry No. 21 read with entry No. 35 of the Concurrent List."

Nothing further Deed be said on this point. With respect we accept and follow the said decision.

Re. (2): The next contention is based upon Art. 19 of the Constitution. The question is whether Ch. IVA of the Act is saved by Art. 19(6) of the Constitution. If Chiva, which provides for the nationalization of road transport services in the manner prescribed, thereunder is not a permissible legislation covered by Art. 19(6), it would certainly offend against the fundamental right of the petitioners to do business in motor transport. The constitutional validity of Ch. IVA of the Act was raised in Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corporation (2). There it was argued that Ch. IVA of the Act was a piece of colourable legislation whose real object was to take over the business of the petitioners therein under the cover of cancellation of permits in contravention of Art. 31 of the Constitution and that plea was rejected by this Court. But no attack was made on the validity of Ch. IVA of the Act on the ground that it infringed the provisions of Art. 19(1)(g) of the Constitution and was not saved by cl. (6) of the Article. That point is now raised before us. Under Art. 19(1)(g), all citizens shall have the right to carry on trade or business. The material part of (6) of Art. 19, as amended by the Constitution (First Amendment) Act, 1951,reads:

> " Nothing in sub-clause (g) of the said clause.. shall affect the operation of any existing law in so far (1) [1960] 3 S.C.R. 742.
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> (2) [1959] Supp. 1 S.C.R. 319.

as it relates to, or 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, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise." The only question is, how far and to what extent Art. 19(6) secures the validity of Ch. IVA of the Act from attack that it offends against Art. 19(1)(g) ? Learned counsel for the Petitioners contends that Art. 19(6)(ii) provides only for partial exclusion of citizens, that is, the exclusion of a certain class of persons as a whole and not for partial exclusion of some among the same class. As s. 68C, the argument proceeds, enables the State Transport Undertaking to frame a scheme for excluding some among the same class, the said provision is not saved by Art. 19(6) of the Constitution. Relevant portions of s. 68C of the Act read:

> " Where any State transport undertaking is of opinion that..... 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...."

Under this section a scheme may be framed in respect of road transport service in general or in respect of a particular class of such service empowering the State Transport Undertaking to run the said service ; it may be in relation to any area or route or a portion thereof; it may also be to the exclusion of all or some of the persons running the said service in general or a particular class of it. The section enables the State to take over particular class of a service, say, the bus service, and exclude all or some of the persons doing business in that class of service. Learned counsel says that

this section confers a wide power beyond the permissible limits of Art. 19(6)(ii) of the Constitution. To state it differently, the argument is that while Art. 19(6)(ii) does not enable a partial exclusion of some among the same class of service, s. 68C permits the said exclusion.

The answer to this argument depends upon the true meaning of the provisions of the said Article. Under sub-cl. (ii) of Art. 19(6), the State can make a law relating to the carrying on by the State or by a corporation owned or controlled by the State, of any particular business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. Article 19(6) is only a saving provision and the law made empowering the State to carry on a business is secured from attack on the ground of infringement of the fundamental rights of a citizen to the extent it does not exceed the limits of the scope of the said provision. Sub-clause (ii) is couched in very wide terms. Under it the State can make law for carrying on a business or service to the exclusion, complete or partial, of citizens or otherwise. The law, therefore, can provide for carrying on a service to the exclusion of all the citizens; it may, exclude some of the citizens only; it may do business in the entire State or a portion of the State, in a specified route or a part thereof The word " service "

> is wide enough to take in not only the general motor service but all the species of motor service. There are, therefore, no limitations on the State's power to make laws conferring monopoly on it in respect of an area, and person or persons to be excluded. In this view, it must be held that s. 68C does not exceed the limits prescribed by Art. 19(6)(ii) of the Constitution.
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> Re. (3): The next contention is that the provisions of Ch. IVA of the Act, and particularly those of s. 68C thereof, offend against Art. 14 of the Constitution. The argument is that Ch. IVA enables the State to make a discrimination between the State Road Transport Corporation on the one hand and private operators and private transport undertakings on the other, and also to make a similar discrimination between the private operators or the private transport undertakings, and that this discrimination is left to the arbitrary discretion of the Transport Corporation. It is true that the provisions of this Chapter enable a scheme to be framed conferring a monopoly on the State in respect of transport services to the partial or complete exclusion of other persons. However, the provisions of the scheme do not make any distinction between individuals operating a transport service and private transport undertakings; they are all treated as one class and the classification is only made between the State Transport Undertaking and private transport undertakings, whether the business is carried on by individuals or firms or companies. The only question, therefore, is whether such a classification offends against the equality clause of the Constitution. Article 14 says:
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> " The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

This doctrine of equality has been so frequently considered by this Court that it does not require any further consideration. It has been held that this Article does not prohibit reasonable classification

for the purpose of legislation, but such a classification cannot be arbitrary but must be based upon differences which have rational relation to the object sought to be achieved. Doubtless in the present case, the Legislature placed the State Transport Undertaking in a class different from other undertakings. The question is whether the classification made in Ch. IVA of the Act is just and has reasonable relation to the object of the legislation. The object of Ch. IVA, as disclosed by the provisions of s. 68C, is to provide in the interest of the public an efficient, adequate, economical and properly coordinated road transport service. To achieve that object s. 68C confers a power on the State Transport Undertaking to prepare a scheme to run the service, whether to the exclusion, complete or partial, of other persons or otherwise. The classification has certainly reasonable nexus to the object sought to be achieved. Ordinarily a State Transport Undertaking, compared with per. sons or private undertakings, should be in a better Position than others to carry on the said services for the benefit of the public administratively, financially and technically it can be expected to be in a far better position than others. It can provide more well equipped buses, give better amenities to the travelling public, keep regular timings, repair or replace the buses in emergencies. It may also employ efficient supervisory staff to keep things going at an appreciably high standard. We are not suggesting that there are no individuals or private companies who can efficiently run the service. But the State, compared with individuals, should certainly be in a better position to achieve the object, namely, to improve the road transport service in all its diverse aspects. In such a situation, when the legislature, which must be presumed to understand and correctly appreciate the needs of its own people, makes a classification between a State Transport Undertaking and others carrying On the business of transport services, we cannot say that there is no reasonable basis for such a classification. But it is said that s. 68C of the Act and other provisions of Ch. IVA thereof confer an arbitrary power upon the State Transport Undertaking to discriminate between individuals and the said Undertaking between individuals and private undertakings, and between individuals and individuals. But the scheme of Ch. IVA, which has been considered by this Court in Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation (1), evolves a machinery for keeping the State Transport Undertaking within bounds and from acting in an arbitrary manner, for s. 68C lays down the legislative policy in clear and understandable terms and the State Transport Undertaking can initiate a scheme only for providing an efficient, adequate, economical and properly coordinated road transport service. Another condition which it lays down is that the scheme is necessary in the public interest. The scheme so framed is published, with all- necessary particulars, in the official Gazette and also in such manner as the State Government may direct; persons affected by the scheme may file objections within the prescribed time ; the State Government, after considering the objections and (1) [1959] Supp. 1 S.C.R. 319.

giving an opportunity to the objectors or their representatives and the representatives of the State Transport Undertaking to be beard in the matter, may approve or modify the scheme; the scheme so approved or modified is published. The rules framed under the Act provide for personal hearing. If the State Transport Undertaking seeks to modify a scheme, it will have to follow the same procedure before doing so: see as. 68C, 68D and 68E of the Act. It will be seen from the provisions of Ch. IVA of the Act that the State Transport Undertaking, before propounding a scheme, arrives at the decision on objective criteria. The parties affected and the public are given every opportunity to place their objections before the Government, and the Government, after following the prescribed quasi- judicial procedure, confirms or modifies the scheme. The scheme, before it is finalised, is

subjected to public gaze and scrutiny and the validity and appropriateness of the provisions are tested by a quasi-judicial process. The Government cannot be equated to a Court; but the procedure prescribed accords with the principles of natural justice. It is said that the State Transport Undertaking is either the State Government or a corporation, owned or controlled by the State, and as such the entire quasi-judicial procedure prescribed is only a cloak to screen the exercise of an absolute and arbitrary power on the part of the Government. We cannot say that Ch. IVA is such a device. The Legislature made a sincere attempt to protect as far as possible individual rights from the arbitrary acts of the executive. Once it is conceded that Ch. IVA of the Act is constitutionally good and that the Legislature can validly make law for nationalization of the road transport service, the procedure laid down for implementing the said policy cannot, in our view, be said to be unreasonable. If in any particular case the mala fides of the authorities concerned and collusion between the State Transport Undertaking and the State Government to deprive particular persons of their right to do road transport business or to drive out particular persons from the trade on extraneous considerations, are established, that may be a ground for striking down that particular scheme. But the provisions of Ch. IVA cannot be struck down on the ground that they confer an arbitrary power on the State Transport Undertaking and on the State Government to discriminate between individuals and the State Transport Undertaking, between individuals and private undertakings, and between individuals and individuals.

This question was raised in Saghir Ahmad v. The State of U. P. (1). That case dealt with the provisions of the U. P. Road Transport Act, 1951 (U. P. Act II of 1951). Under s. 42(3) of that Act the Government was exempt from taking permits for its own vehicles and it could run any number of buses as it liked without the necessity of taking out permits' for them. In furtherance of the State policy to establish a complete State monopoly in respect of road transport business, the transport authorities began not only to cancel the permits already issued to private operators but also refused to issue permits to others, who would other. wise be entitled to them. The constitutional validity of that section was questioned. It may also be mentioned that though that decision was given after the Constitution (First Amendment) Act, 1951, it was not based upon that amendment, as the Constitution before the amendment governed the rights of the parties therein. In that situation, adverting to the argument based upon Art. 14 of the Constitution, Mukherjea, J., as he then was, made the following observations at p. 731:

> " There is no doubt that classification is inherent in the concept of a monopoly; and if the object of legislation is to create monopoly in favour of the State with regard to a particular business, obviously, the State cannot but be differentiated from ordinary citizens and placed in a separate category so far as the running of the business is concerned and this classification would have a perfectly rational relation to the object of the statute.", Section 3 of that Act provided that " where the State (1) [1955] 1 S.C.R. 707.

Government is satisfied that it is necessary, in the interest of general public and for subserving the common good, so to direct, it may declare that the Road Transport Services in general, or any particular class of such service on any route or portion thereof, shall be run and operated by the State Government exclusively or by the State Government in conjunction with railway or partly by

the State Government and partly by others in accordance with the provisions of this Act It was contended therein that, as the State could choose any and every person it liked for the purpose of being associated with the transport service and as there were no rules to guide its discretion, that provision would offend against Art. 14 of the Constitution. It was pointed out on behalf of the State that the discretion under s. 3 of that Act was not uncontrolled as that could Only be done by granting of permits in accordance with the provisions of the Motor Vehicles Act. Accepting the construction suggested, this Court held that the discretion to be exercised by the State would be a, regulated discretion guided by statutory rules. But in the instant case, no liberal construction of the provisions need be resorted to, for Ch. IVA of the Act in specific terms provides a complete and, in the circumstances, satisfactory machinery for reasonably regulating the exclusion of all or some of the private operators from the notified area or route. We, therefore, hold that the provisions of Ch. IVA of the Act do not infringe the equality clause enshrined in Art 14 of the Constitution.

Re. (4): By the next contention the learned counsel attacks the validity of the scheme on the ground that the Government is actuated by bias against the private operators of buses in West Godavari District, and indeed had predetermined the issue. In the petitions it was alleged that the Government had complete control over the Road Transport Corporation that the entire administration and control over such road transport undertaking vested in the Government, that the Chief Secretary to the Government of Andhra Pradesh was its chairman and that, therefore, the entire scheme, from its inception to its final approval, was really the act of the Government. On this hypothesis it was contended that the Government itself was made a judge in its own cause and that, therefore, its decision was vitiated by legal bias. That apart, it was also pleaded that a sub-committee, consisting of Ministers, Secretaries and officers of connected departments and presided over by the Minister in charge of transport, decided in its meeting of January 28, 1960, that under the scheme of nationalization of bus service, the State Government would take over the bus services in West Godavari District and Guntur District before the end of that year and, therefore, the Minister in charge of the portfolio of transport, he having predetermined-the issue, disqualified himself to decide the dispute between the State Transport Undertaking and the petitioners. The self same questions were raised in Gullapalli Nagestvara Rao v. The State of Andhra Pradesh(1). There, as in this case, it was contended that the Chief Minister, who was in charge of the portfolio of transport, could not be a judge in his own cause, as he was biased against the private operators. This Court pointed out the distinction between official bias of an authority which is inherent in a statutory duty imposed on it and personal bias of the said authority in favour of, or against, one of the parties. In dealing with official bias this Court, after considering the relevant English decisions, observed at p. 587 thus:

> "These decisions show that in England a statutory invasion of the common law objection on the ground of bias is tolerated by decisions, but the invasion is confined strictly to the limits of the statutory exception. It is not out of place here to notice that in England the Parliament is supreme and therefore a statutory law, however repugnant to the principles of natural justice, is valid ; whereas in India the law made by Parliament or a State Legislature should stand the test of fundamental rights declared in Part III of the Constitution."

(1) [1960] 1 S.C.R. 580.

Then this Court proceeded to state that the provisions of the Act did not sanction any dereliction of the principles of natural justice, for the Act visualized in case of conflict between the undertaking and the operators of private buses that the State Government should sit in judgment and resolve the conflict. Much to the same effect has been stated by Shah, J., in H. C. Narayanappa v. The State of Mysore (1) though in slightly different phraseology. The learned Judge stated :

> " It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the ,authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government."

In the above cases the transport department of the Government was the transport undertaking, but here the State Road Transport Corporation, which is a body corporate having a perpetual succession and common seal, is the transport authority. Though under the provisions of the Act, the State Government has some control, it, cannot be said either legally or factually that the said Corporation is a department of the State Government. The State Government, therefore, in deciding the dispute between the said undertaking and the operators of private buses is only discharging its statutory functions. This objection, therefore, has no merits. Nor can we say that it has been established that the Minister in charge of the portfolio of transport has been actuated by personal bias. The fact that he presided over the sub-committee constituted to implement the scheme of nationalization of bus services in the West Godavari District does not in (1) [1960] 3 S.C.R. 742.

itself establish any such bias. Indeed, in the counter affidavit filed on behalf of the first respondent the con- tents and authenticity of the reports of the proceedings of the sub-committee published in the Telu daily "Andhra Pradesh " were not admitted. Even if the sub-committee came to such a decision, it is not possible to hold that it was a final and' irrevocable decision in derogation of the provisions of the Act. it was only a policy decision and in the circumstances could only mean that the sub-committee advised the State Government to implement the policy of nationalization of bus services in that particular district. The said decision could not either expressly or by necessary implication involve a predetermination of the issue: it can only mean that the policy would be implemented subject to the provisions of the Act. It is not suggested that the Minister in charge of the concerned portfolio has any personal bias against the operators of private buses or any of them. We, therefore, hold that it has not been established that the Minister in charge of the portfolio of transport bad personal bias against the operators of private buses and, therefore, disqualified himself from hearing the objections under Ch. IVA of the Act.

Re. (5): The next contention is based upon the observations of this Court in Shrinivasa Reddy v. The State of Mysore (1). After elaborating on the scope of s. 68C of the Act, Wanchoo, J., observed at p.

136 thus:

> "Therefore, the scheme to be framed must be ,such as is capable of being carried out all at once and that is why the Undertaking has been given the power to frame a scheme for an area or route or even a portion thereof..... If the Undertaking at that stage has the power to carry it out piecemeal, it would be possible for it to abuse the power of implementation and to discriminate against some operators and in favour of others included in the scheme and also to break up the integrity of the scheme and in a sense modify it against the terms of s. 68E."

Based on these observations it is contended that the State Government intended to frame only one scheme (1) [1960] 2 S C.R. 130.

for the entire district though it was not in a position to implement the scheme in the entire district at one and the same time, but to circumvent the observations of this Court it had split up one scheme into seven schemes. The first respondent in its counter affidavit met this allegation in the following way:

> "Having regard to the resources of the Undertaking in men, material and money, each scheme has been so framed that it is capable of being carried out all at once, and in full, without breaking its integrity' The State Transport Undertaking will carry out each of the published schemes on a date fixed by the State Government for the implementation of each scheme". The Minister in his order also adverted to this aspect and observed: " In this case, seven different schemes have been framed. Each scheme is a separate and independent scheme by itself In terms of the notification, each scheme after approval will come into force only from a date to be, fixed by the Government. Though different dates may be fixed for each scheme, each scheme will be implemented in its entirety. No piecemeal implementation of any one scheme will be done ". Indeed the order of the Minister fixed specific dates from which each of the schemes shall come into force. This Court did not lay down that there cannot be any phased programme in the nationalization of transport services in a State or in a district; nor did it hold that there cannot be more than one scheme for a district or a part of a district. The observations of this Court in regard to the implementation of a scheme piecemeal were aimed at to prevent an abuse of power by discriminating against some operators and in favour of others in respect of a single scheme. In the present case, seven schemes were framed not to circumvent the observations of this Court, but only to avoid the vice inherent in piecemeal implementation. Not only seven separate schemes were framed in respect of separate areas of the district, but also the Government made it clear that each scheme should be implemented in its entirety commencing from different dates. We do not, therefore, see any legitimate objection to the framing of seven separate, schemes.
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> Re. (6): This contention questions the validity of the schemes on the ground that the Chief Executive Officer of the Andhra Pradesh Road Transport Corporation is not

> empowered to publish the schemes and, therefore, the schemes were not validly published. In exercise of the powers conferred by S. 68C of the Act, the Andhra Pradesh State Road Transport Corporation proposed the schemes and published them in the Andhra Pradesh Gazette, Part 11, p. 1310. The proposed schemes were signed by Guru Pershad, Chief Executive Officer, State Transport Undertaking, Andhra Pradesh Road Transport Corporation, The relevant provisions of the Road Transport Corporations Act, 1950 (Act LXIV of 1950) may be noticed at this stage. Under s. 4 of the said Act, " Every Corporation shall be a body corporate by the name notified under section 3 having perpetual succession and a common seal, and shall by the said name sue and be sued ". Relevant portions of s. 12 read: " A Corporation may from time to time by resolution passed at a meeting.....

authorize the Chief Executive Officer or General Manager, or any other officer of the Corporation subject to such conditions and limitations if any as may be specified in the resolution to exercise such powers and perform such duties as it may deem necessary for the efficient day to day administration of its business". Section 13 says: " All orders and decisions of a Corporation shall be authenticated by the signature of the Chairman or any other member authorized by the Corporation in this behalf and all other instruments issued by a Corporation shall be authenticated by the signature of the Chief Executive Officer or General Manager or any other officer of the Corporation authorized in like manner in this behalf". Relying upon the said provisions, learned counsel for the petitioners contends that the preparation and publication of the schemes in question under s. 68C of the Act are orders or decisions of the Corporation and, therefore, should be authenticated by the signature of the Chairman or any other member duly authorized under s. 13 of the Road Transport Corporations Act and not by the Chief Executive Officer. The first respondent in its counter-affidavit attempted to meet this contention by stating that the Corporation by resolution authorized the Chief Executive Officer to exercise such powers and perform such duties as it may deem necessary for the efficient day to day administration of its business and the Chief Executive Officer in exercise of such authorization published the schemes in the Gazette. The first respondent relied upon s. 12 of the Road Transport Corporations Act and not on s. 13 thereof to sustain the power of the Chief Executive Officer to publish the schemes. We have no reason not to accept the statement of the first respondent that there was a resolution passed by the Corporation in terms of s. 12 (c) of the Road Transport Corporations Act. If so, the only question is whether the act of publishing the proposed schemes framed by the Corporation in the Gazette pertains to the day to day administration of the Corporation's business. The Chief Executive Officer has no power under the Act to frame a scheme. Section 68C empowers only the State Transport Undertaking to prepare a scheme and cause every such scheme to be published in the official Gazette and also in such other manner as the State Government may direct. The scheme, therefore, need not be directly published by the Corporation, but it may cause it to be published in the official Gazette. The act of publishing in the official Gazette is a ministerial act. It does not involve any exercise of discretion. It is only a mechanical one to be carried out in the course of day to day administration. So understood, there cannot be any difficulty in holding that it was purely a ministerial act which the Chief Executive Officer by reason of the aforesaid resolution can discharge under s. 12(c) of the Road Transport Corporations Act. It must be presumed for the purpose of this case that the Corporation decided the terms of the proposed schemes and the said decision must have been duly authenticated by the Chairman or any other

member authorized by the Corporation in this behalf and the Chief Executive Officer did nothing more than publish the said scheme in exercise of its administrative functions. We, therefore,, hold that the Chief Executive Officer was well within his rights in publishing the said proposed schemes in the Andhra Pradesh Gazette.

Re. (7): The next argument turns upon the provisions of r. 4 of the Andhra Pradesh Motor Vehicles Rules. The relevant part of the rule reads: " The scheme or approved scheme to be published in the official Gazette as required under section 68C or 68D as the case may be, shall contain the following particulars: (i)..... (ii) the number of vehicles proposed to be operated on each route ". In certain schemes the number of vehicles to be operated on each route was not specified, and one number was mentioned against two or more routes bracketing them. When an objection was taken before the Government in regard to this matter, the Minister accepted it and directed that the scheme might be modified so as to indicate the number of vehicles to be operated on each route separately. The schemes were accordingly' modified by indicating the number of vehicles to be operated on each route separately and the approved schemes with the said modification were duly published in the Gazette dated March 21, 1960. The approved schemes, therefore, satisfy rule 4(2),of the Rules, for the approved schemes, as duly modified, contain the number of vehicles proposed to be operated on each route. But the point sought to be made is that the Minister himself should have fixed the number of vehicles proposed to be operated on each route and should not have merely directed the appropriate modification to be made in the approved schemes. It does not appear from the record that there was any dispute before the Minister as regards the apportionment of the number of vehicles shown against two or more routes to each of the routes; but the only contention raised was that the bracketing of the number of vehicles between two or more routes contravened the provisions of r. 4. Though the order of the Minister only contains a direction, the apportionment of the vehicles, between the routes was not made by the State Transport Authority, but only by the Government, for the approved schemes were published not by the Chief Executive Officer but by the State Government. It must be presumed that the allocation also must have been made with the approval of the Minister. There are no merits in this objection either. Re. (8): The next contention is that r. 5 framed by the State Government in exercise of the power conferred on it under s. 68(1) is inconsistent with the provisions of s. 68B of the Act and, therefore, is void. The schemes prepared by the State Transport Authority contain the following note: "

> The frequency of services on any of the notified routes or within any notified area shall, if necessary, be varied having regard to the traffic needs during any period ". In- deed the said note was practically a reproduction of a note appended to r. 5. The only question is whether r. 5 and the note made pursuant thereto come into conflict with s. 68E of the Act. Section 68E reads:
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> " Any scheme published under sub-section (3) of section 68D may at any time be cancelled or modified by the State transport undertaking and the procedure laid down in section 68C and section 68D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be modified as if the modification proposed were a separate scheme". The short question that arises is whether the variation of frequency of service by the State Transport Undertaking

amounts to a modification of a scheme within the meaning of s. 68E of the Act. The rule is not so innocuous as the learned Advocate-General of the Andhra Pradesh contends. Under that rule the State Transport Undertaking, having regard to the needs of traffic during any period, may increase or decrease the number of trips of the existing buses or vary the frequency by increasing or decreasing the number of buses. This can be done without any reference to the public or without hearing any repre- sentations from them. This increase or decrease, as the case may be, 'Can only be for the purpose of providing an efficient, adequate, economical transport service in relation to a particular route within the meaning of s. 68C. At the time the original schemes are proposed, the persons affected by them may file objections to the effect that the number of buses should be increased or decreased on a particular route from that proposed in the schemes. The Government may accept such suggestions and modify the schemes; but under this rule the authority may, without reference to the public or the Government, modify the schemes. Learned counsel contends that the note only provides for an emergency. But the rule and the note are comprehensive enough to take in not only an emergency but also a modification of the scheme for any period which may extend, to any length of time. We are, therefore, definitely of opinion that the rule confers power on the State Transport Undertaking to modify substantially the scheme in one respect, though that power can only be exercised under s. 68E of the Act in the manner prescribed thereunder. This rule is void and, therefore, the said note was illegally inserted in the schemes. But on that ground, as the learned counsel contends, we cannot hold that the schemes are void. The note is easily severable from the scheme,% without in any way affecting their structure. Without the note the schemes are self-contained ones and it is impossible to hold that the schemes would not have been framed in the manner they were made if this note was not allowed to be included therein. We, therefore, hold that the note should be deleted from the schemes and the schemes are otherwise good.

Re. (9): The last of the arguments attacks the schemes in so far as they include new routes. The new routes included in the schemes are Eluru to Kovvur, and Nidadavol to Jeelugumilli. It is argued that the provisions of s. 68C are concerned with the existing routes only. Support is sought to be drawn for this contention from the provisions of s. 68C of the Act. The relevant part of that section says: " Where any State transport undertaking is of opinion that..... 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..... the State transport undertaking may propose a scheme..... ". Now the contention is that the word " route " in that section refers to a preexisting route, for it is said that the words "

route or portion thereof " in the section clearly indicate that the route is an existing route, for a scheme cannot be framed in respect of a portion of a proposed route. We do not see any force in this contention. Under s. 68C of the Act the scheme may be framed in respect of any area or a route or a portion of any area or a portion of a route. There is no inherent inconsistency between an " area "

and a " route ". The proposed route is also an area limited to the route proposed. The scheme may as well propose to operate a transport service in respect of a new route from point A to point B and that route would certainly be an area within the meaning of s. 68C. We, therefore, hold that s. 68C certainly empowers the State Transport Undertaking to propose a scheme to include new routes.

Though some other points were raised in the affidavits filed before us, they were not pressed.

In the result we hold that the note relating to the frequency of the services appended to the schemes must be deleted and that in other respects the petitions fail; and accordingly they are dismissed with costs. One set of hearing fees.

Petitions dismissed.