Supreme Court of India
Adarsh Travels Bus Service & Anr vs State Of U.P. & Ors on 17 October, 1985
Equivalent citations: 1986 AIR 319, 1985 SCR (3) 661
Author: O C Reddy
Bench: Reddy, O. Chinnappa (J), Venkataramiah, E.S. (J), Eradi, V. Balakrishna (J), Misra, R.B. (J), Khalid, V. (J)

PETITIONER:
ADARSH TRAVELS BUS SERVICE & ANR.

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT17/10/1985

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
VENKATARAMIAH, E.S. (J)
ERADI, V. BALAKRISHNA (J)
MISRA, R.B. (J)
KHALID, V. (J)

CITATION:
1986 AIR 319 1985 SCR (3) 661
1985 SCC (4) 557 1985 SCALE (2)880
CITATOR INFO :
RF 1986 SC1112 (1)
R 1987 SC 29 (2)
RF 1987 SC 711 (3)
RF 1987 SC 714 (4)
R 1987 SC 958 (4)
R 1988 SC 303 (2)
D 1988 SC2047 (7)
APL 1990 SC 412 (3,4)
RF 1992 SC1888 (9)

ACT:
Motor Vehicles Act 1939: Sections 68B, 68C & 68D Nationalised or notified route - Right of private operator to operate on common over-lapping sector - Imposition of Corridor restrictions - Permissibility of.
Scheme - Preparation and publishing of - Approving or modifying of - Interest of travelling public - Protection of Necessity.
Words & Phrases: route - Meaning of - Section 2(28A) Motor Vehicles Act 1939- D

HEADNOTE:

The appellants in the appeals were holders of stage carriage permits over certain intra-state routes as well as inter-state routes. Parts of the routes on which they were plying their stage carriages were notified under Chapter IVA of the Motor Vehicles Act 1939. They contended that they may be permitted to ply their stage carriages over the entire route by imposing "corridor restrictions i.e. not picking up or setting down any passengers at any point on the nationalised part of the routes".

In the appeals to this court the question was: where a route is nationalised under Chapter IVA of the Motor Vehicles Act 1939 whether a private operator with a permit to ply a stage carriage over another route but which has a common over-lapping sector with the nationalised route can ply his vehicle over that part of the over-lapping common sector if he does not pick up or set down passengers on the over-lapping part of the route.

On behalf of the appellants, it was contended that a route" according to the definition in Section 2(28A) of the Motor Vehicles Act 1939 meant a line drawn between two terminii and if the portion of it had been nationalised, it would have no effect whatsoever on the permits to ply state carriages on the

662

route, and that the complete exclusion of private operators from the common sector would be violative of article 14 and also ultra vires section 68-D of the Act- It was further contended that the provisions of Chapter IV and Chapter IVA of the Act must be construed in such a manner as to allow permit holders to ply their stage carriages notwithstanding that parts of their route are also parts of notified routes.

Dismissing the appeals and special leave petitions,

^

HELD :1(a) None of the schemes contains any saving clause in favour of operators plying or wanting to ply stage carriages on common sectors. However, there is invariably a clause in the scheme to the effect that no person other than the State Government Undertaking will be permitted to provide road transport service on the route specified in the scheme. In view of this provision in the scheme there is a total prohibition of private operators from plying stage carriages on the whole or part of the notified routes. The appellants cannot therefore contend that they can ply their vehicles on the notified routes. [678 G-679 A]

(b) When preparing and publishing the scheme under section 68-C and approving or modifying the scheme under section 68-D care must be taken to protect, as far as possible, the interest of the travelling public who could in the past travel from one point to another without having to change from one service to another enroute. This can always be done by appropriate clauses exempting operators already

having permits over the common sector from the scheme to enable them to ply their vehicles over common sectors without picking up or setting down passengers on the common sectors. If such a course is not feasible the State Legislature may intervene and provide some other alternative. [667 F-H]

2. The right of the members of the public to pass and re-pass over a highway including the right to use motor vehicles on the public road existed prior to the enactment of the Motor Vehicles Act, 1939 and was not its creation. The State could control and regulate the right for the purpose of ensuring the safety, peace and good health of the public. As an incident of this right of passage over a highway, a member of the public was entitled to ply motor vehicles for pleasure or pastime or for the purpose of trade and business subject to permissible control and regulation by the State. [666 G - 667A]

663

Saghir Ahmed v. State of U.P., [1955] 1 S.C.R 707, referred to.

3. Chapter IVA of the Motor Vehicles Act 1939 was bodily introduced by Amending Act No. 100 of 1956 to provide for the nationalisation of road transport services. Section 68-B gives over-riding effect to the provisions of Chapter IVA and the rules and orders made thereunder over the provisions of Chapter IV ant any other law for the time being in force. [667 E; 668 B]

4. While the provisions of Chapter IVA are devised to over-ride the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IVA are clear and complete regarding the manner and the effect of the take over of the operation of a road transport service by tho State Transport Undertaking in relation to any area or road or operation thereof. The initial requirement of the initiation of a scheme is that the State Transport Authority must think it necessary in the public interest to provide sufficient, adequate, economical and properly Coordinated State Transport Service in relation to any area or route or portion thereof to the exclusion, complete or partial or other persons or otherwise. Even at thus stage, the State Transport Undertaking is required to apply its mind to the question of complete or partial exclusion of other persons or otherwise for operating transport services. Thereafter objection to the scheme are to be heard. All existing operators providing transport facilities along or near the area or the route proposed to be covered by the scheme are to be heard. Any operator who is likely to be affected by total or partial exclusion can thus, object to the scheme and suggest such modifications as may protect him. A hearing is required to be given and the hearing is no empty formality. Even thereafter, the State Transport Undertaking as well as the State Government are empowered to cancel or modify the scheme under section 68E. Therefore, if in the

actual working of the approved scheme any difficulty or hardship is experienced by the public or by other operators such difficulty may be removed and hardship relieved by appropriate action under section 68E. Both section 68F and the proviso to section 68FF provide for the issue of temporary permits to private operators if the State Transport Undertaking has not applied for a permit temporary or otherwise in respect of a scheme published or approved. At every stage, abundant provision is thus, made to protect the public interest as also the interest of private operators by providing for consideration and re-consideration of any problems that may arise out of a proposed, published or approved scheme. It is in this context that section 68-C and 68 HH must be construed. [671C - 672B]

664

5. A careful and diligent perusal of sections 68-C, 68-D(3) and 68-FF in the light of the definition of the expression "route" in section 2(28A)appears to make it manifestly clear that once a scheme is published under section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicles on any part or portion of a notified area or notified route unless authorised 80 to do by the terms of the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to his covered the notified route or area. [672 C-E]

6. It is well known that under the guise of the so called "corridor restrictions" permits over longer routes which cover shorter notified routes or "overlapping" parts of notified routes are more often that not mis-utilised since it is need to nigh impossible to keep a proper check at every point of the route. Often times, permits for plying stage carriage from a point a short distance beyond one terminus to a point at a short distance beyond another terminus of a notified route have been applied for and granted subject to the 80 called "corridor restrictions" which are but mere ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconvenience, the State Transport Undertaking and the government will ha e to make sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public. [672 - 673C]

Ram Sanehi Singh v. Bihar State Road Transport Corporation [1971] 3 S.C.C. 797; Nilkantha Prasad & Ors. v. State of Bihar [1962] Supp. 1 S.C.R. 728; C.P.C. Motor Service Mysore v. The State of Mysore & Another [1962] Supp.

1 S.C.R. 717; S. Abdul Khader Saheb v. Mysore Revenue Appellate Tribunal Bangalore & Ors., [1973] 1 S.C.C. 357, referred to.

Mysore State Road Transport Corporation v. Mysore Revenue Appellate Tribunal [1975] 1 S.C.R. 615, approved.

Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal [1975] 1 S.C.R. 493, over-ruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No.. 1021 of 1976 etc. From the Judgment and Order dated 10.8.1976 of the Allahabad High Court in Special Appeal No. 248 of 1973.

J.P. Goyal, R.K. Garg, Yogeshwar Prasad, S.N. Kacker, O.P. Rana, K.K.. Venugopal, Rajesh, V.K. Verma, Suman Kapoor, R.K. Jain, R.P. Singh, R.A. Sharma, S.K. Jain, Mrs. Rani Chhabra, S.R. Srivastave, R.B. Mehrotra, Mrs. C. Markandeya, Raju Ramachandran, P.K. Pillai, Raj Narain Munshi, Sudhansu Atreya, Gopal Subramaniam, Mrs. Shobha Dikshit, S.K. Bisaria, B.D. Sharma, S.C. Birla and B.Y. Maheshwari for the appearing parties.

The Judgment of the Court was delivered by C CHINNAPPA REDDY, J. These appeals have been placed before us primarily to resolve a conflict between Ram Sanehi Singh v. Bihar State Road Transport Corporation [1971] 3 S.C.C. 797, Mysore State Road Transport Corporation v. Mysore Revenue Appellate Tribunal and Others [1975] 1 S.C.R. 493, and Mysore State Road Transport Corporation v. Mysore Revenue Appellate Tribunal and others [1975] 1 S.C.R. 615. The question for our consideration is, where a route is nationalised under Chapter IV-A of the Motor Vehicles Act, whether a private operator with a permit to ply a stage carriage over another route but which has a common overlapping sector with the nationalised route can ply his vehicle over that part of the overlapping common sector if he does not pick up or drop passengers on the overlapping part of the route? The answer to the question really turns on the terms of the scheme rather than on the provisions of the statute, as we shall presently show.

We will mention here the facts of a few cases which are illustrative of the question raised. In Civil Appeal No. 684 of 1981, the appellants hold a stae carriage permit over the route Meerut to Ambala via Bamanheri, Deoband, Gagalheri and Saharanpur. One part of the route, namely Meerut to Bamanheri is also part of a nationalised route Meerut- Bamanheri-Hardwar while yet another part of the route, namely, Gagalheri to Saharanpur is part of another nationalised route Hardwar-Dehradun-Gagalheri Saharanpur. The question has arisen whether the petitioners may be allowed to ply their stage carriage over the whole of the route Meerut-Bamanheri-Deoband-Gagalheri-Saharanpur-Ambala provided that they observe 'corridor restrictions', that is, provided they do not pick up or set down any passengers between Meerut and Bamanheri and between Gagalheri and Saharanpur In Civil Appeal Nos. 1909 and 1910 of 1981, the appellants were applicants for the grant of stage carriage permits over the route Etah- Dhumari Sidhupur-Patiyali. The route Etah-Dhumari-Daryaganj- Qaimganh had already been notified under Chapter IV-A of the Motor Vehicles Act. As part of the route over which the appellate applied for

permits to ply stage carriages had already been notified under Chapter IVA of the Motor Vehicles Act, their applications for the grant of permits were rejected. They claimed that they should have been granted permits by imposing "corridor restrictions" over that part of the route which had been notified. In Civil Appeal No. 1021 of 1976, the appellant held a permit for plying a stage carriage over the inter-state route, Allahabad to Rewa. The permit is said to have been granted in favour of another individual, originally under an inter- state agreement between the State of Uttar Pradesh and Madhya Pradesh. On the failure of the original permit-holder to obtain a renewal of the permit he lost the permit and it was thereafter granted to the appellant. Part of the route between Allahabad and Chakghat via Panari was nationalised by the Uttar Pradesh Government, The whole of the route Rewa to Allahabad was nationalised by the Madhya Pradesh Government with the concurrence of the Central Government, but with exemptions in favour of the existing operator plying under inter-state agreements, though the matter has not been made very clear to us. me appellant claims that notwithstanding the nationalisation of the route from Allahabad to Chakghat, he is entitled to ply that stage carriage over that part of the route also by observing "corridor restrictions". In Civil Appeal No. 2921 of 1981, the State of Rajasthan has nationalised part of an inter- state route and the complaint is that the appellant should have been permitted to ply his stage carriage over the entire route with "corridor restrictions" over the nationalised part of the route. In Civil Appeal Nos. 164-166 of 1982, the complaint is that a very insignificant portion of the route on which the appellants hold stage carriage- permits is included in a nationalised route and therefore, the scheme should have exempted the operation of private stage carriages over the common sector.

The right of the members of the public to pass and re- pass over a highway including the right to use motor vehicles on the public road existed prior to the enactment of the Motor Vehicles Act and was not its creation. The State could control and regulate the right for the purpose of ensuring the safety, peace, and good health of the public. As an incident of his right of passage over a highway, a member of the public was entitled to ply motor vehicles for pleasure or pastime or for the purpose of trade and business, subject, of course, to permissible control and regulation by the State, Saghir Ahmed v. State of U.P., [1955] 1 S.C.R. 707. Under Article 19 (6) (ii) of the Constitution, 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. The law could provide for carrying on a service to the total exclusion of all the citizens; lt 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 part thereof. The word 'service' has been construed to be wide enough to take in not only the general motor service, but also the species of motor service. There are no limitations on the States power to make laws conferring monopoly on it in respect of an area, and person or persons to be excluded, Kondala Rao v. A.P.. State Road Transport Corporation, A.I.R. [1961] S.C. 82. All this is now well established by the various decisions of this court.

Chapter IVA of the Motor Vehicles Act provides for the nationalisation of road transport services in the manner prescribed therein. No question of the vires of any provision of Chapter IVA on any ground has been raised before us. Chapter IVA of the Motor Vehicles Act was bodily introduced into it by Amending Act No. 100 of 1956. It further underwent substantial amendments by Act 56 of 69 of 1970 which came into effect on March 2, 1970. We may mention here 6.2(28A) defining 'route'

was also introduced by Act 56 of 69. 'route' was defined as meaning 'a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. The introduction of 8. 2(28A) defining the expression 'route' appears to have been necessitated to dispel the confusion consequent upon the seeming acceptance by High Court in Nilkantha Prasad and Others v. State of Bihar, [1962] Supp. 1 S.C.R. 728 of the suggested difference between 'route' and 'highway' by the Privy Council in Kalani Valley Motor Transit Co. Ltd., v. Colombo Ratnapura Omnibus Co. Ltd., 1946 A.C. 338 where it was said, "A highway" is the physical track along which an omnibus runs, whilst a "route" appears to their Lordships to be an abstract conception of line of travel between one terminus and another, and to be something distinct from the highway traversed ..... there may be alternative roads leading from one terminus to another but that does not make the route any highway the same." The present definition of route makes it a physical reality instead of an abstract conception and no longer make it something distinct from the highway traversed. Getting back to the highway and Chapter IVA, we first notice s.68-A(a) which defines road transport service to mean a service of / tor vehicles carrying passengers or goods or both by road for hire or reward. Next, and this is important, 8. 68-B gives over-riding effect to the provisions of Chapter IVA and the rules and orders made thereunder over the provisions of Chapter IV and any other law for the time being in force. Section 68-C provides for the 'preparation and publication of scheme of road transport service of a State Transport Undertaking'. Since the answer to the question raised turns primarily on the interpretation of sec. 68-C, it is desirable to extract the same. It is as follows :

> 68-C. Where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State Transport Undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in h other manner as the State Government may direct.

The policy of the legislature is clear from s.68-C that the State Transport Undertaking may initiate a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the State Transport Undertaking in relation to any area or route o. portion thereof. It may do 80 if it is necessary in the public interest. me scheme may be to the exclusion, complete or partial, of other persons or otherwise. m e scheme should give particulars of the nature of the service proposed to be rendered, the area or route proposed to be covered and such other particulars as may be prescribed. me scheme has to be published in the Official Gazette as well as in any other manner that the State Government may direct. The object of publishing this scheme is to invite objections to the scheme. Section 68-D enables

(i) any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme; (ii) any association representing persons interested in the

provision of road transport facilities recognized in this behalf by the State Government; and (iii) any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies to file objections to the scheme before the State Government within 30 days from the date of its publication in the Official Gazette. Clause 2 of sec. 68-D empowers the State Government to consider the objections, give an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in the matter if they so desire and approve or modify the scheme. Clause 3 of sec. 68-D requires the scheme as approved or modified to be published in the Official Gazette whereupon the scheme becomes final and shall thereafter be called an approved scheme. There 18 a proviso to clause 3 which provides that no scheme which relates to any inter-state route shall be deemed to be an approved scheme unless lt has been published with the previous approval of the Central Government. Section 68-E enables the State Transport-Undertaking to cancel or modify any scheme published under 88. 68-D(3) after following the procedure laid down in sec. 68-C and sec. 68-D in respect of certain matters, such as, the increase in the number of vehicles or the number of trips, change in the type of vehicles without reducing the sitting capacity, extension of the route or area without reducing the frequency of the service, alteration of the time-table without reducing the frequency of the service. m e State Transport Undertaking need not follow the procedure laid down in sec. 68-C and sec. 68-D if the previous approval of the State Government is obtained and if the scheme 18 one relating to any route or area in respect of which the road transport services are to be run and operated by the State Transport Undertaking to the complete exclusion of other persons. Section 68-E, sub-sec. 2 enables the State Government, at any time, if it considers necessary in the public interest so to do, to modify a scheme published under sec. 68-D(3) after giving an opportunity of being heard to the State Transport Undertaking and any other person who in the opinion of the State Government is likely to be affected by the proposed modification. Section 68-F(1) obliges the Regional Transport Authority or the State Transport Authority, as the case may be, to grant to the State Transport Undertaking the necessary permits on its applying for the same in pursuance of an approved scheme. The permits have to be issued notwithstanding anything to the contrary in Chapter IV. Section 68-F(l-A) oblige the State Transport Authority or the Regional Transport as the case may be, to issue temporary permits to the State Transport Undertaking, for the period intervening between the date of publication of the scheme and the date of publication of the approved or modified scheme. The State Transport Authority or the Regional Transport Authority must, however, be satisfied that it is necessary in the public interest to increase the number of vehicles operating in such area or route or portion thereof previously. Section 68-F(1-C) enables the State Transport Authority or the Regional Transport Authority, as the case may be, to grant to private operators temporary permits if no application for a temporary permit is made under sub-sec.(1- A) in respect of the area or route or portion thereof specified in the scheme. Section 68-F(1-D) prohibits the grant or renewal of a permit, save as otherwise provided in sub-sec.(1-A) and sub-sec.(1-C) during the period intervening between the date of publication of any scheme and the date or publication of the approved or modified scheme. Sub-sec. 2 of sec. 68-F enables the State Transport Authority the Regional Transport Authority as the case may be, for the purpose of giving effect to the approved scheme in respect of a notified area or notified route, to refuse to entertain any application for the grant or renewal of any permit or reject any such application as may be pending, to cancel any existing permit, and to modify the terms of any existing permit so as to render the permit ineffective beyond a specified date, to reduce the number of vehicles authorised to be used under the permit

and to curtail the area or route covered by the permit in 80 far as such permit relates to the notified area or notified route. Section 68- FF prohibits the grant of any permit except in accordance with a provision of the scheme, once a scheme has been published under sec.68-D(3) in respect of any notified area or notified route. This is an important provision and we may extract it here. It is as follows:

> 68-FF where a scheme has been published under sub- section 3 of sec.68-D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme.

There is, however, a proviso which enables the grant of a temporary permit to any person in respect of such notified area or notified route if no application for a permit has been made by A the State Transport Undertaking. Section 68-G and 68-H prescribe the principles and method of determining compensation and its payment to the holders of existing permits which cancelled or modified. Section 68-I empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Chapter and in particular in accordance with the various matters specified in sub-sec. 2 It is thus seen that while the provisions of Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IVA are clear and complete regarding the manner and effect of the take over of the operation or road transport service by the State Transport Undertaking in relation to any area or route or portion thereof. While on the one hand, the paramount consideration is the public interest, the interest of the existing operators are sufficiently well- taken care of and such slight inconveniences to the travelling public as may be inevitable are sought to be reduced to a minimum. To begin with the State Transport Undertaking must think it necessary in the public interest to provide efficient, adequate, economical and properly coordinated State Transport services in relation to any area or route or portion thereof, to the exclusion complete or partial of other persons or otherwise. This is the initial requirement for the initiation of a scheme. Even at that stage, the State Transport Undertaking is required to apply its mind to the question of complete or partial exclusion of other persons or otherwise from operating transport services in relation to any area or route or portion thereof. There is ample and sufficient guidance to the State Transport Undertaking for the application of mind. Thereafter objections to the scheme are to be heard. All existing operators providing transport facilities along or near the area or the route proposed to be covered by the scheme are to be heard. Therefore, it will be open to any operator who is likely to be affected by total or partial exclusion to object to the scheme and suggest such modification as may protect him. A hearing is required to be given and the hearing is no empty formality as decisions of this Court have shown. Even that is not an end of the matter. Even thereafter, the State Transport Undertaking as well as the State Government are empowered to cancel or modify the scheme under sec. 68-E. In other words, if in the actual working of the approved scheme any difficulty or hardship is experienced by the public or for that matter by other operators, such difficulty may be removed and hardship relieved by appropriate action under section 68-E. both sec.68F and the proviso to sec.68-FF provide for the issue of temporary permits to private operators if the State Transport Undertaking has not applied for a permit temporary or otherwise in respect of scheme published or approved. We thus find chat at every stage, abundant provision is made to protect the public interest as also the interest of private operators by providing

for consideration and reconsideration of any problems that may arise out of a proposed, published or approved scheme. It is in that context, we must construe sec.68-C and sec.68HH both of which provisions have been extracted by us earlier.

A careful and diligent perusal of sec.68-C, sec.68-D(3) and sec.68FF in the light of the definition of the expression 'route' in sec.2(28-A) appears to make it manifestly clear that once a scheme is published under sec.68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or por-ion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. We are not impressed by the various submissions made on behalf of the appellants by their several counsel. The foremost argument was that based on the great inconvenience which may be caused to the travelling public if a passenger is not allowed to travel, say, straight from A to on a stage carriage, to ply which on the route A to a person X has a permit, merely because a part of the route from to somewhere between the points A and is part of a notified route. The answer to the question is that this is a factor which will necessarily be taken into consideration by the State Transport Undertaking before publishing the scheme under sec.68-C, by the Government under sec.68-D when considering the objections to the scheme and thereafter either by the State Transport Undertaking or by the Government when the inconveniences experienced by the travelling public are brought to their notice. me question is one of weighing in the balance the advantages conferred on the public by the nationalisation of the route C-D against the inconveniences suffered by the public wanting to travel straight from A to B. On the other hand, it is quite well known that under The guise of the so called 'corridor restrictions' permits over longer routes which cover shorter notified routes or 'overlapping' parts of notified routes are more often than not misutilised since it is next nigh impossible to keep a proper check at every point of the route. It is also well known that often times permits for plying stage carriages from a point a short distance beyond one terminus to a point a short distance beyond another terminus of a notified route have been applied for and granted subject to the so-called corridor restrictions, which are but more ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned counsel we have no doubt that the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public.

One of the submissions urged was that a route, according to definition, meant a line drawn between two terminii and therefore, route AB cannot be the same route as CD even if C & D happened to be two points on the highway from A to B. It was argued that if route AB was different from route CD, the nationalisation of route CD had no effect whatsoever on the permits to ply stage carriages on the route AB. This argument is specious and is only to be stated to be rejected. In fact, whatever argument was open to the learned counsel on the basis of the decision of the Privy Council in Kelani Valley Motor Transit Co. Ltd.. v. Colombo- Ratnapura Omnibus Co. Ltd. (supra) is no longer open to them in view of the definition of route inserted as sec. 2(28-A) of the Motor Vehicles Act by the

Amending Act of 1969. We do not have the slightest doubt that route AB covers and includes every part of the particular highway from A to traversed by the Motor vehicle along the route. It is impossible to accept the argument that only the terminii have to be looked at and the rest of the highway ignored in order to discover a route for the purposes of the Motor Vehicles Act. Equally without substance is the plea that if an operator does not pick up or set down any passenger between the two points of the common sector he cannot be said to be plying a state carriage between these two points. The argument is entirely devoid of substance for the simple reason that the operator does charge the passenger for the distance travelled along the highway between these two points also. Another argument which was advanced and which is also lacking in substance is that a complete exclusion of private operators from the common sector would be violative of Art. 14 and that it would be ultra vires sec. 68-D. We are unable to see how either Art.14 or sec.68-D of the Motor Vehicles Act hit a scheme which provides for complete exclusion of private operators from the whole or any part of the notified area. Almost all these submissions have been considered and met by the majority judgment in Mysore State Road Transport Corporation v. Mysore Revenue Appellate Tribunal, [1975] 1 S.C.R. 615, to which we shall presently refer.

In C.P.C. Motor Service, Mysore v. The State of Mysore Anr., [1962] supp. 1 S.C.R. 717, the impugned scheme provided for taking over certain stage carriage services to the complete exclusion of private operators. It provided:

> The State Transport Undertaking will operate services to the complete exclusion of other persons (1) on all the notified inter-district routes except in regard to the portions of inter-

district routes lying outside the limits of Mysore District, and also (ii) over the entire length of each of the inter-district route lying within the limits of Mysore District Certain persons who possessed stage carriage permits to ply vehicles on inter-district and inter-state routes which overlapped the Mysore District challenged the scheme and contended that their permits should not be affected merely because parts of the routes were within the Mysore District. Their contention was that since the terminii of the routes on which they were operating vehicles were outside Mysore District it could not properly be said that any portion of their route had been taken over merely because it lay within the Mysore District. It was held by this court that a route meant not only the notional line but also the actual road over which the motor vehicles ran and in view of the fact that the scheme reserved all the routes within the Mysore District to the State Transport Undertaking, no private operator could be allowed to ply his vehicle on the common sector which was within the Mysore District. His route automatically steel pro tanto cut down to only that portion which lay outside the Mysore District.

Even before the introduction of the definition of route in sec. 2(28-A)) by the 1969 amendment, in Nilakanth Prasad and Others v. State of Bihar (supra), the court understood the word 'route' on practically the same lines with reference to sec. 68-C and sec. 68-F. The court said, This means that even in those cases where the notified route and the route applied for run over a common sector, the curtailment by virtue of the notified scheme would be by excluding that portion of the route or, in other words, the road common to both. The distinction between "route" as the physical track

disappears in the working of Chapter IVA, because you cannot curtail the route without curtailing a portion of the road, and the ruling of the Court to which we have referred, would also show that even if the route was different, the area at least would be the same. The ruling of the Judicial Committee cannot be made applicable to the Motor Vehicles Act, particularly Chapter IV-A, where the intention is to exclude private operators completely from running over certain sectors or routes vested in State Transport Undertakings. In our opinion, there fore, the appellants were rightly held to be disentitled to run over those portions of their routes which were notified as part of the scheme. Those portions cannot be said to be different routes, but must be regarded as portions of the routes of the private operators from which the private operators stood excluded under s. 68- F(2)(c)(iii) of the Act.

In Ram Sanehi Singh v. Bihar State Road Transport Corporation & ors. (supra), there was a slight note of discordance. The appellant there possessed a permit to ply a stage carriage on a rout-e which had a common sector of five miles of a notified route. On the examination of the scheme, the Court found that there was nothing in the notified scheme which completely excluded the other holders of permits from plying their stage carriages in pursuance of permits issued to them from terminii not on points on the notified route. It was held that merely because the appellant had to run his vehicle on a part of the notified route without the right to pick up passengers or to drop them, his permit to the extent of the overlapping portion could be said to be ineffective. We are afraid that this decision must be confined to its own facts. The learned judges did not notice the earlier decision of the court in CPC Motor Services, Mysore v. The State of Mysore and Anr. (supra) and Neelkanth Prasad and Ors. v. The State of Bihar (supra). They also failed to notice that while sec. 68-C provides for preparation and publication of scheme giving particulars of the services proposed to be run and operated by the State Transport Undertaking in relation to any area or route to the exclusion, complete or partial, of other persons or otherwise. Section 68-FF also debars the State Transport Authority and the Regional Transport Authority from granting any permit except in accordance with the provisions of the scheme.

In S. Abdul Khader Saheb v. The Mysore Revenue Appellate Tribunal, Bangalore & Ors. [1973] 1 S.C.C. 357, the court approved the view of the High Court of Karnataka that, "when once on a route or a portion of the route there has been total exclusion of operation of stage carriage services by operators other than the State Transport Undertaking by virtue of a clause in an approved scheme, the authorities granting permit under Chapter IV of the Motor Vehicles Act, should refrain from granting a permit contrary to the scheme."

In Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal [1975] 1 S.C.R. 493, Beg and Chandrachud JJ, departing from the views generally taken till then, took the view that a scheme which totally excluded inter-state private operators from using any part of a notified route must make the intention clear. There was a difference between area and route. Route denoted the abstract conception of line of travel. A difference in the two terminii of two routes would make the two routes different even if there was overlapping. Unless the scheme clearly indicated that the user of any portion of the highway covered by the notified route was prohibited, inter- state operators could not be debarred from plying their vehicles over the overlapping part of the inter-state route merely because of the physical fact of the overlapping of the two routes. The learned judges did not notice the earlier decisions of the court in C.P.C. Motor Service, Mysore v.

The State of Mysore & Anr. (supra) and Abdul Khader v. The Mysore Revenue Appellate Tribunal (supra). Nilkanth Prasad's (supra) case was noticed but by-passed with the observation "whatever may be said about the correctness of the decision" etc. In Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal [1975] 1 S.C.R. 615, all the earlier cases were noticed and lt was held, It is, therefore apparent that where a private transport owner makes an application to operate on a route, which overlaps even a portion of the notified route i.e. where the part of the highway to be used by A the private transport owner traverses on a line on the same highway on the notified route, then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected. ....

This Court has consistently taken the view that if there is prohibition to operate on a notified route or routes no licences can be granted to any private operator whose route traversed or overlapped any part or whole of that notified route. The intersection of the notified route may not, in our view, amount to traversing or overlapping the route because the prohibition imposed applied to a whole or part of the route on the highway on the same line of the route. An intersection cannot be said to be traversing the same line, as it cuts across it.

The learned judges expressly dissented from the decision of Beg and Chandrachud, JJ. in Mysore State Transport Corporation v. Mysore Revenue Appellate Tribunal [1975] 1 S.C.R. 493, and approved the decisions of the court in Nilkanth Prasad's case (supra) and Abdul Khader's case (supra). We agree with the view taken by this court in Mysore State Road Transport Corporation v. Mysore Revenue Appellate Tribunal [1975] 1 S.C.R. 615, and dissent from the view taken' in Mysore State Road Transport Corporation v. The Mysore Revenue Appellate Tribunal [1975] S.C.R. 493. We however wish to introduce a note of caution. When preparing and publishing the scheme under s. 68-C and approving or modifying the scheme under s.68-D care must be taken to protect, as far as possible, the interest of the travelling public who could in the past travel from one point to another without having to change from one service to another enroute. This can always be done by appropriate clauses exempting operators already having permits over common sector from the scheme and 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. If such a course is not feasible the State Legislature may intervene and provide some other alternative as was done by the Uttar Pradesh Legislature by the enactment of the Uttar Pradesh Act No. 27 of 76 by sec. 5 of which the competent authority could authorise the holder of a permit of a stage carriage to ply his stage carriage on a portion of a notified route subject to terms and conditions including payment of licence fee. There may be other methods of not inconveniencing through passengers but that is entirely a matter for the State Legislature, the State Government and the State Transport Undertaking. But we do wish to emphasise that good and sufficient care must be taken to see that the travelling public is not to be needlessly inconvenienced.

Shri R.K. Garg urged that the provisions of Chapter IV and Chapter IV-A must be reconciled in such a manner as to allow permit holders to ply their stage carriages notwithstanding that parts of their route are also parts of notified routes. We fail to understand the argument having regard to the express legislative pronouncement in s. 68-B that the provisions of Chapter IV-A and the rules and

orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act.

In one of the cases it was argued before us that though the scheme framed by the Uttar Pradesh Transport Undertaking prohibited the plying of private stage carriages on the notified part of an inter-state route within the State of Uttar Pradesh, a later Madhya Pradesh Scheme published by the Madhya Pradesh State Transport Undertaking pursuant to an inter-state agreement allowed the plying of stage carriages by private operators on that part of the route which was in Uttar Pradesh also. The argument was that the later scheme superseded the earlier scheme and therefore the operators could ply their vehicles on the Uttar Pradesh part of the route also. We are unable to see how the scheme framed by the Uttar Pradesh State Transport Undertaking can be superseded by the scheme framed by the Madhya Pradesh State Transport Undertaking.

We are therefore unable to see any merit in any of the Civil Appeals since none of the schemes placed before us contain any saving clause in favour of operators plying or wanting to ply stage carriages on common sectors. On the other hand we found that invariably there is a clause to the following effect : "No person other than the State Government Undertaking will be permitted to provide road transport services on the routes specified in paragraph 2 or any part thereof". In the face of a provision of this nature in the scheme totally prohibiting private operators from plying stage carriages on a whole or part A of the notified routes, it is futile to contend that any of the appellants can claim to ply their vehicles on the notified routes or part of the notified routes. All the appeals and Special Leave Petitions are therefore dismissed, with costs which we quantify at Rs.2,500 in each. All the interim orders of this court which enabled the appellants to operate their vehicles on notified routes or part of notified routes or which enabled the appellants to apply for and obtain permits to 80 operate, with or without the so- called corridor restrictions are hereby vacated.

N.V.K. Appeals and Petitions dismissed.