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must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant."

However, in the case before us there is no claim on behalf of the plaintiff that he is willing to pay the entire consideration for obtaining a decree against the interest of Pindidas alone in the property. In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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v.

ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION

(B. P. SINHA, C.J., K. SUBBA RAO, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR JJ.)

Motor Vehicles—Nationalisation of road transport service—Preparation and enforcement of scheme—Validity—Issue of permits to State Transport Undertakings—Motor Vehicles Act, 1939 (4 *of* 1939), *as amended by Act* 1 *of* 1956, *Ch. IV, ss.* 68*C*, 68*D*(3), 68*F*(1)—*Andhra Pradesh Motor Vehicles Rules,* 1957, *rr* 4, 141.

The respondent corporation appointed an expert committee to go into the question as to the working of nationalised transport in the State. The Committee laid down the criteria for determining the order in which

areas and routes had to be selected for nationalisation and had drawn up a list of the remaining districts in which nationalisation should be successively taken up. Accordingly, Nellore would have been the next district to be taken up and the turn of Kurnool district would have come up after nationalisation of the routes in Nellore, Chittore and Cuddapah districts were completed. This report was submitted to the Corporation in February, 1961 and the Corporation accepted it and embodied the approval in its Administration Report dated March 24, 1962 which was published in April, 1962. After the General Election in 1962 the Chief Minister assumed office as Chief Minister on March 12, 1962. On April 19, 1962, he summoned a conference of the Corporation at which, he suggested that the nationalisation of bus routes in the Kurnool district should be taken up first. By its resolution dated 4-5-1962, the Corporation made an alteration in the order of the districts, successively to be taken up for nationalisation and selected the western half of the Kurnool as the area to be nationalised in the first instance. The appellants, motor transport operators whose routes were all in western half of the Kurnool districts filed objections to the Schemes before the Transport Minister. The Transport Minister approved the schemes. Thereafter, the Corporation applied to the Regional Transport Authority for permits. The appellants then challenged the validity of the schemes in the High Court and in support of that allegations were made in the affidavit that the Chief Minister was motivated by bias and personal ill-will against the appellants, that he felt chagrined at the defeat of his partymen and supporters and desiring to wreak his vengeance against the motor transport operators of the western parts of Kurnool, his political opponents, instructed the Corporation to change the order in which the districts should be taken up for nationalisation and that the corporation gave effect to these instructions and directions. These allegations were not denied by the Chief Minister, nor was an affidavit filed by any person who could claim to know personally about the truth about these allegations. The High Court repelled these allegations and dismissed the petition. On appeal by certificate the appellants mainly contended: (1) that the schemes did not in reality reflect the opinion of the Corporation as required by s. 68-C of the Act, but that the schemes owed their origin to the direction of the Chief Minister who acted *malafide* in directing the Transport Undertaking to frame the impugned schemes; (2) that the approval of the schemes by the Transport Minister under s. 68-D(3) must be held to be vitiated by the *malafides* of the Chief Minister; (3) that the impugned schemes did not conform to the statutory requirements of s. 68-C and rule 4 of the Rules regarding the particulars to be embodied in the schemes; (4) that some of the routes included in the schemes were inter-state routes and that under the proviso to s. 68-D(3) it could not be deemed to be an approved scheme unless the previous approval of the Central Government had been obtained and (5) that even when a transport undertaking applies for a stage carriage permit under s. 68-F(1) it must comply with the provisions of r. 141 of the Rules.

Held: (1) On the evidence placed in the present case it must be held that it was a result of the conference of the 19th April, 1962 and in

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order to give effect to the wishes of the Chief Minister expressed there, that the impugned schemes were formulated by the Corporation and therefore, it would be vitiated by *malafides* notwithstanding the interposition of the semi-autonomous corporation.

Though the counter-affidavits contained a denial of the allegation that the Corporation was acting at the behest of the Chief Minister, there was no explanation for the choice of the western portion of Kurnool district. Therefore, the impugned schemes were vitiated by the fact that they were not in conformity with the requirements of s. 68-C of the Act.

(ii) There was nothing on the record to indicate that the Chief Minister influenced the Transport Minister. Besides, the Transport Minister stated on oath that in considering the objections under s. 68-D(3) and approving the schemes he was uninfluenced by the Chief Minister. Therefore, it cannot be held that his approval of the schemes did not satisfy the requirements of the law.

(iii) In the present case some of the variations between the maxima and minima in the number of the vehicles proposed to be operated on each route were such as to really contravene r. 4 of the Andhra Pradesh Motor Vehicles Rules, 1957.

Dosa Satyanarayanamurthy v. *The Andhra Pradesh State Transport Corporation*, [1961] 1 S.C.R. 642, referred to.

(iv) The route which was proposed to be nationalised under the scheme admittedly lay wholly within the State. The right of the private operators to ply their vehicles beyond the State border was not affected by any of the schemes. Therefore, the proviso to s. 68-D(3) was not attracted and consequently the schemes did not suffer from the defects alleged.

(v) The High Court was right in holking that the Regional Transport Authority which is specifically mentioned in s. 68-F(1) is empowered to issue the permit to the transport undertaking "notwithstanding anything to the contrary contained in Chapter IV" and that the section rendered the provisions of r. 141 of the Motor Vehicles Rules inapplicable to cases covered by s. 68-F(1). No doubt, in a State where there is no Regional Transport Authority at all, but there is some other authority which functions as the Regional Transport Authority for the purposes of the Act, such an authority might be that which would be comprehended by s. 68-F(1) but where as in Andhra Pradesh there is admittedly a Regional Transport Authority, it cannot be held that such authority is deprived of the power to issue a permit by reason of s. 68-F(1) merely because the Regional Transport Authority of that area cannot grant permits under Chapter IV.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 770 of 1963.

WITH

Civil Appeals Nos. 771—778, 883 and 884 of 1963.

Appeals from the judgment and order dated April 19, 1963, of the Andhra Pradesh High Court in Writ Petitions Nos. 267—275 and 289 and 295 of 1963.

A. V. Viswanatha Sastri, P. Babula Reddy and *K. R. Chaudhuri*, for the appellants (in C.A. No. 77/1963).

P. Babula Reddy and *K. R. Chaudhuri*, for the appellants (in C. A. Nos. 771—777/1963).

K. R. Chaudhuri, for the appellants (in C.A. No. 778/1963).

K. Srinivasa Murthy and *K. R. Chaudhuri*, for the appellants (in C. A. Nos. 883 and 884 of 1963).

D. Narasaraju, Advocate-General, Andhra Pradesh, P. R. Ramachandra Rao and *B. R. G. K. Achar*, for the respondents (in all the appeals).

January 27, 1964. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR J.—This batch of 11 Appeals which have been consolidated for hearing are directed against the common judgment of the High Court of Andhra Pradesh and are before us on the grant of a certificate of fitness under Art. 133(1) of the Constitution by the said High Court.

The proceedings concerned in the appeals arise out of Writ Petitions filed before the High Court by the several appellants before us under Art. 226 of the Constitution challenging the validity of three Schemes framed under Chapter IV-A of the Motor Vehicles Act, 1939, nationalising motor transport in certain areas in the Kurnool District of the State of Andhra Pradesh which for convenience we shall refer to as the impugned Schemes. The appellants who impugn the validity of the schemes are the previously existing motor transport operators whose permits are liable to be modified or cancelled under the provisions of

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the Schemes on their coming into force. The impugned schemes were published by Government as G.O.Ms. 292, 293 and 294 of the Home, Transport Department on the 5th February, 1963 in virtue of the powers conferred on Government by sub-s. 2 of the 68-D of the Motor Vehicles Act. The Andhra Pradesh State Road Transport Corporation which for shortness we shall refer to as the Corporation, besides the State of Andhra Pradesh and the Regional Transport Authority, Kurnool were impleaded as respondents to the petitions. They are also the respondents before us. By reason of the first Scheme, 34 routes were intended to be taken over, while under the 2nd and 3rd, 17 and 13 routes respectively were proposed to be nationalised. The routes covered by these three schemes are all in the western half of the Kurnool District.

Before adverting to the points requiring consideration in the appeals, it would be convenient to set out the relevant statutory provisions relating to the nationalisation of Road Transport for it is primarily on their construction that the decision of the appeals would turn.

Chapter IV-A containing special provisions relating to "State Transport Uundertakings" was introduced into the Motor Vehicles Act (Act IV of 1939) by an amendment effected by Central Act I of 1956 which came into effect on 16-2-1957. The Chapter consists of sections numbered 68-A to 68-I. 68-A contains definitions and of these it is sufficient to refer to the definition of "State Transport Undertaking" which includes *inter alia* "any undertaking providing road transport service, where such undertaking is carried on by.....any Road Transport Corporation established under sec. 3 of the Road Transport Corporation Act 1950." (to refer to the portion which is material.)

(It might be mentioned that the Corporation, the first respondent before us is a body established under this enactment.)

68-B reads :—

> "The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith

contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law."

The next section 68-C which is the one most involved in the appeals runs:

"Where any State Transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated 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 such other manner as the State Government may direct."

The first two sub-sections of section 68-D enable persons affected by a Scheme published under s. 68-C to file objections thereto before the State Government within thirty days after the publication of the Scheme. It further provides for the State Government considering the objections raised by persons affected by the Scheme after giving an opportunity to the objectors and the "undertaking" to be heard in the matter before approving or modifying the Scheme. The Scheme so approved or modified is required to be published in the State Gazette and on such publication it becomes final and is to be called "the approved scheme". This is followed by sub-sec. (3) which reads:—

"The scheme as approved or modified under sub-s. (2) shall then be published in the Official

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Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

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

Section 68-E provides:

"any scheme published under sub-s. (3) of S. 68-D may at any time be cancelled or modified by the State transport undertaking and the procedure laid down in s. 68-C and s. 68-D 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."

Section 68-F is really consequential on the approval of the scheme and sub-s. (1) thereof enacts:—

"Where, in pursuance of an approved scheme, any State Transport Undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter IV."

Its second sub-section enables the Regional Transport Authority to refuse renewal of any other permits to private operators and otherwise to deal with those permits so as to give effect to the Scheme. Sections 68-G and 68-H deal with the payment of compensation and the methods by which the same should be computed but as these are not material, we shall not quote them.

Section 68-I empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV-A and among the specific purposes for which such rules may be framed is one under s. 68-I(2)(a) which provides for the form in which any scheme or approved scheme may be published under section 68-C or sub-section (3) of Section 68-D and as usual a residuary clause reading:

> "any other matter which has to be or may be considered."

These draft schemes prepared by the Corporation were published under s. 68-D in the official Gazette on the 29th of November, 1962. The appellants among others filed objections to the schemes and thereafter there was a hearing of these objections by the Transport Minister of the State under s. 68-D(2) on the 11th of January, 1963. The Minister passed an order according approval to the schemes on the 12th of February, 1963, and the schemes as finalised were published in the Gazette on the next day, February 13, 1963. In pursuance of the provisions of the schemes the Corporation made application to the Regional Transport Authority for permits. Soon thereafter the appellants and a few others filed writ petitions invoking the jurisdiction of the High Court under Art. 226 of the Constitution praying for the quashing of the schemes. These petitions were dismissed by the High Court by a common judgment on the 19th of April, 1963, holding that the objections made to the validity of the schemes would not be sustained. The learned Judges, however, on the application of the Appellants granted a certificate of fitness under Art. 133 in pursuance of which these appeals have been preferred.

The points urged by the appellants before us in support of their submission regarding the invalidity of the impugned schemes, were substantially the same as were urged before High Court and which the learned Judges repelled. Briefly stated the principal ones were:—(1) that the schemes did not in reality reflect the opinion of the Corporation that "it was necessary in the public interest that the Road Transport services in the area or over the route, specified in the

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schemes should be run and operated by the State Transport Undertaking" as is required by s. 68-C but that the schemes owed their origin to the direction of the Chief Minister of Andhra Pradesh who acted *mala fide* in directing the Transport Undertaking to frame the impugned schemes for the areas for which they were purported to be framed; (2) that the decision by the Transport Minister overruling the objections raised by the several road transport operators to the schemes was also *mala fide,* in that he too acted in pursuance of the *mala fide* intentions of the Chief Minister of Andhra Pradesh; (3) that the provisions of the schemes (and this applied both to the draft schemes published by the Corporation as well as the approved schemes published under s. 68-D(3) did not conform to the statutory requirements of s. 68-C and rule 4 of the Rules regarding the particulars to be embodied in the schemes and that in consequence the core of the scheme was in violation of Rule 68(E) of the Act; (4) that the schemes comprised not merely intra-state routes but also included inter-state transport routes and in the latter case the procedure prescribed by the proviso to s. 68-D was not followed and hence all the impugned schemes which are integrated ones are bad and require to be set aside. There were also a few minor ones which we shall notice and examine later.

We shall deal with these four points in the same order. Before taking up the first one *viz.*, that the draft scheme in s. 68-D really did not originate from the Corporation, the State Transport Undertaking, but that it was done under the direction of the Chief Minister who, it was alleged for reasons which were set out in the affidavits and to which we shall refer presently was stated to have compelled, directed or induced the Corporation to do so, it would be necessary to give a short resume of the history of nationalised transport in Andhra Pradesh as well as certain events in Andhra Pradesh politics which have been the subject of allegations in these proceedings. The present State of Andhra Pradesh is made up of two distinct areas—(1) what is known as the "Telengana area" consisting of nine districts of the old Hyderabad State and (2) the "Andhra area" which separated from Madras *i.e.* from the composite

Madras State, in October 1953 and which comprised 11 districts. These two areas were integrated under the States Re-organization Act, 1956, to form the present State of Andhra Pradesh. In the Telengana area the road transport services had been run by the Government of the Nizam since the year 1932 and by 1956 private motor road transport operators had been completely eliminated from this entire area. In the Andhra Area comprising the 11 districts however, nationalisation of motor transport had not been undertaken. Soon after the formation of the State of Andhra Pradesh, the Andhra Pradesh State Road Transport Corporation was established with effect from 11th of January, 1958 with a view to take steps for extending nationalised transport to the Andhra areas of the State. Certain routes in three of the 11 Districts Krishna, West Godavari and Guntur were nationalised from 1959 onwards. The Vijayawada—Masulipatam and Vijayawada-Guntur routes were nationalised in the first instance and thereafter by about September, 1959, almost the entire routes in Krishna District were nationalised. The next district to be taken up was West Godavari which was done in March, 1960. The process was nearly completed in this district by the 1st of February, 1960, except for a few routes. The Government had sanctioned certain schemes for nationalisation in Guntur District which were expected to be completed by October, 1961. The question which was thereafter the subject of consideration was the manner in which and the stages whereby nationalisation of the motor transport throughout the State might be brought about. With this object the Corporation adopted a resolution in 1960 by which it decided to appoint an expert Committee to go into question as to the working of nationalised transport with a view to improve its efficiency as well as for drawing up plans for the future expansion of the road transport services in the State. The terms of reference to that Committee were comprehensive and it started functioning very soon after the members were appointed. Shri S. Anantharamakrishnan, Chairman of Messrs. Simpson & Co. Ltd., Madras, one of the principal motor transport operators of the Madras State, was the Chairman of the Committee and it comprised three other members who were officials of the

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Andhra Pradesh State Government. The Committee made various recommendations in the Report which it submitted to the Corporation on the 9th February, 1961. Among the several recommendations which this Committee made, what is of relevance to the present appeals and on which reliance was placed in support of the plea that the impugned schemes were vitiated by *mala fides* are those contained in Chapter IX of the Report and in particular the priorities of areas for taking up nationalisation which the Committee recommended in paragraph 125. They set out in paragraph 124 the factors which should be taken into account in fixing the order in which new areas should be taken up for nationalisation as being (1) "the most profitable areas should be taken up first;" (2) "from the traffic point of view there should be contiguous expansion;" (3) "from the administrative point of view it is convenient to nationalise bus services district by district;" and (4) "the proposal to form large sized divisions should be borne in view." Adopting these criteria the Committee stated in paragraph 125 "that the nationalisation of bus transport may be extended to the remaining districts in the Andhra area as indicated below:—

1961-62—Guntur District

1962-63—Nellore and Chittor Districts

1963-64—Cuddapah and Kurnool Districts

1964-65—Anantapur and East Godavari Districts

1965-66—Visakhapatnam and Srikakulam Districts".

The Committee also added in paragraph 126 "we recommend that a policy decision may be taken by Government on the proposal to extend nationalisation of bus services to the remaining Andhra Districts during the Third Five Year Plan. The order in which the new areas will be taken over may also be decided by Government. The Corporation will then be able to make its plans well in advance, and arrange to provide all the facilities that are needed for expanding its activities to other districts." This report of the

Anantharamakrishnan Committee was the subject of consideration by the Corporation and they accepted in March, 1962 the above recommendation regarding the phased programme of nationalisation of districts in the order indicated and embodied this recommendation in their Administration Report for the period January 11, 1958. (the day on which the Corporation was formed) to March 31, 1961 which was submitted to the Government as required by s. 35(2) of the Road Transport Corporation Act, 1960, on the 7th of April, 1962. In this last document they said speaking of future trends, "the programme for nationalisation of transport services in the remaining of the Andhra Pradesh is as indicated below:—

1961-62—Guntur District

1962-63—Nellore and Chittor Districts

1963-64—Cuddapah and Kurnool Districts

1964-65—Ananthapur and East Godavari Districts

1965-66—Vishakhapatnam and Srikakulam Districts."

In the impugned schemes, however, the Corporation made an alteration in the order of the Districts successively to be taken up for nationalisation. It would be seen that after Guntur District which was nearly completed by the end of 1961 the next districts to be taken up during the 1962-63 would have been Nellore and Chittor Districts in that order and it was only thereafter that the District of Cuddapah and after it Kurnool would be taken up. That was the recommendation of the Anantharamakrishnan Committee and which had been accepted by the Road Transport Corporation as late as April, 1962 and it may be mentioned in this connection that the Vice-Chairman of the Road Transport Corporation was himself a member of the Anantharamakrishnan Committee. By its resolution dated, 4th May, 1962, the Road Transport Corporation decided that instead of the above order Kurnool, Nellore and Cuddapah Districts in that order would be chosen for nationalisation and in the three schemes which were formulated in pursuance of this Resolution the western half of Kurnool was selected as the area to be nationalised in the first instance.

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As we have indicated earlier the appellants before us are transport operators whose routes are all in the western half of the Kurnool District. It is this change in the orders of the Districts in which the routes are to be nationalised and the choice of the Western part of Kurnool for being taken up in the first instance that are alleged to be due to the *mala fide* intentions of the Chief Minister and this forms the main ground upon which the validity of the schemes is impugned.

The allegations in this respect may now be stated. In the affidavit in support of the Writ Petition No. 267 of 1963 from which Civil Appeal No. 770 of 1963 arises, this is what is stated:

> "The General Elections for the various Constituencies of Assembly and Parliament were held in February, 1962. It is well-known that there are two groups in the Congress and they were actively ranged against each other. The previous Chief Minister (Shri Sanjivayya) and the present Chief Minister (Shri Sanjiva Reddy) were both returned from Kurnool District in general elections. The then Chairman of the Zila Parishad Shri Vijaya Bhaskara Reddy contested unsuccessfully from Yemniganpur Constituency in Kurnool District. (Yemniganpur is in the western part of the Kurnool District). He is the active supporter of the present Chief Minister. Shri C. Ram Bhopal son-in-law of the present Chief Minister also unsuccessfully contested from the Nandikothur Constituency in Kurnool District. (Nandikothur is also in the western part of Kurnool). The person who successfully opposed him Sri P. Venkatakrishna Reddy now M.L.A. is a partner in 'Venkata Krishna Bus Service' Nandikothur. This firm owns 2 permits and they stand in the name of Jayaramayya who was the Election Agent of Sri Venkata Krishna Reddy. Two persons Sri Ganikhan and Sri Antony Reddy who are staunch supporters of

the present Chief Minister Sri Sanjiva Reddy were selected as Congress candidates by the Parliamentary Board at Delhi when Sanjiva Reddy was the President of the Indian National Congress, were also defeated in their respective Constituencies. It was considered by one and all that leading transport operators among them, (the petitioners) were responsible for the defeat of these persons and this enraged the feelings of Shri Sanjiva Reddy against the operators in Kurnool District and particularly the operators whose routes lay in the western areas of the District and with a view to cause them loss and to ruin their business this nationalisation of transport in the western part of Kurnool was directed to be undertaken in spite of the Emergency and in spite of the incapacity of the Road Transport Corporation to fulfil their earlier commitments for want of buses. The undivided brothers of Sri T. Narayan, a transport operator, namely Sri Venkataswamy contested the Assembly seat against Sri Sanjiva Reddy in the Dhone Constituency from which he was returned and he refused to withdraw even though lots of pressure were brought on him. Sri Rajasekhara Reddy and Sri Vijayakumara Reddy sons of Sri P. Ranga Reddy, Minister in the previous Cabinet are also transport operators in the Kurnool District. It is known to every one that Sri P. Ranga Reddy is in the group opposed to Sri Sanjiva Reddy.

Sri Y. Mahananda Reddy another transport operator is a staunch supporter of Sri P. Ranga Reddy. When Sanjiva Reddy was President of the Indian National Congress his selection for the Congress ticket was set aside by him and one Vengal Reddy was selected by the Pradesh Congress Committee. It is significant that the three schemes framed for the part of the Kurnool District relate to the areas in

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which the routes on which the above stated persons are running their buses. It is also significant that the areas in Kurnool District where the supporters of the present Chief Minister are having permits are not sought to be included in any of the three nationalisation schemes. In the Nandyal area most of the transport operators are the supporters of the present Chief Minister and their routes are excluded from the schemes. It is with a view to achieve the object of hitting against those operators who have fallen into disfavour and to protect those who are in his good books that the schemes have been evolved over routes and parts of the District."

Two further matters were also urged as supporting this plea of *mala fides*. The first was that with a view to carry out the original programme which was approved and confirmed by the Corporation in their Administration Report published on April 7, 1962, the routes in the Nellore District which according to the Anantharamakrishnan Committee Report had to be taken up next were surveyed and though the elements of contiguity and profitable nature were both present in regard to the extension of the services to Nellore, contiguity by reason of the fact that some buses belonging to the Corporation and running from Guntur were already plying in Nellore District and the profitable nature since these were evaluated by the Anantharamakrishnan Committee whose recommendations were examined and approved by the Corporation, the nationalisation of the routes in Nellore was, however, abandoned and that of the western part of Kurnool was decided upon. The other fact was that the National Defence Council passed a resolution as late as the first week of November, 1962, urging the deferring of further nationalisation of transport services for the present and it was in the teeth of this resolution which was passed at the meeting at which the Chief Minister himself was present that the schemes of nationalisation of transport services in Kurnool district was published by the Corporation on the 29th November, 1962.

Before examining whether these allegations have been made out it would be necessary to explain the legal position in relation to which they have to be considered. To begin with the schemes now impugned have been formulated by the Corporation which is an independent semi-autonomous body brought into existence by the State Government by acting under the Road Transport Corporation Act, 1950. Under s. 68-C of the Motor Vehicles Act it is the Corporation which is the State Transport Undertaking which has to form the opinion whether "for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service it is necessary in the public interest whether the service should be run and operated by the State Transport Undertaking." Secondly, it is the Corporation that has to be satisfied that such services should in public interests be provided "for any area or route". In the present case, it is undoubtedly the Corporation that has published the schemes under s. 68-C in which these two matters are stated to have been considered and decided upon by the Corporation itself. It was not disputed by the appellants that whatever be the inclinations, desires or motives of the Chief Minister, if the Corporation had by an independent consideration of the situation decided on the formulation of the impugned schemes, their validity could not be successfully impugned mearly because the schemes satisfied the alleged grudge which the Chief Minister bore to the affected operators.

The argument urged by the appellants on this part of the case was however tow-fold: (1) That it was not in fact the Corporation that formed the opinion indicated in s. 68-C but really the Chief Minister; (2) That the Chief Minister was motivated by extraneous considerations, namely, to strike at his political opponents who worked either against himself or his friends, supporters and relations in the elections in Bebruary, 1962 and had devised the schemes in order to cause them loss and compass their ruin. A subsidiary point was also urged that the Transport Minister who heard the objections under s. 68-D(2) was also influenced by the Chief Minister. It was thus said that the Chief Minister dominated at every stage through

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which the schemes passed and that the schemes were really the result of his improper motive to ruin his political opponents. It was again not disputed by the respondent that if these steps were made out the schemes would be invalid and ought to be quashed.

The learned Judges of the High Court have on this part of the case held: (1) That the allegations made against the Chief Minister had not been proved; (2) Assuming, however, that the Chief Minister was actuated by political motives to hit at his opponents, still, the schemes which were published by the Corporation, had been framed by the Corporation not at the dictation of the Chief Minister, but as a result of their own independent judgment; and (3) Lastly, the learned Judges held that there was no proof that the Transport Minister who heard the objections raised by the appellants to the schemes was influenced by the Chief Minister or acted at his behest, and therefore that the schemes framed and approved were fully in conformity with the requirements of s. 68-C.

The correctness of these conclusions have been challenged before us and the first matter that requires to be considered is as to whether the allegations against the Chief Minister have been made out. The question raised has manifestly to be considered from two aspects. The first is whether the facts alleged which were stated to have been the cause of the Chief Minister's animus against the transport operators in the western part of Kurnool have been established. In regard to this the first point to be noticed is that the contents of the affidavit were not vague, but details were given and these were: (1) The existence of two groups in the Congress Party at the time of the General Elections in 1962, the Chief Minister being the head of one of them and of the other Mr. Sanjivayya; (2) That at the last General Elections certain candidates who were named and who are stated to have belonged to the group of the Chief Minister were defeated; (3) The Constituencies where they stood were in the western portion of the Kurnool District; (4) That this defeat was occasioned by persons belonging to the other group in the Congress Party whose names are

also given; (5) That several of these members supporting the dissident group were motor transport operators and who are stated to have taken a prominent part in the elections and in the defeat of the candidates belonging to the Chief Minister's group; (6) The matters in relation to Ranga Reddy and his sons etc. These are what might be termed objective facts.

If these allegations were held not proved, then the entire plea of the appellants on this part of the case fails, because there would be no foundation for the submission regarding the *mala fides* of the Chief Minister. If, however, these facts were held to be made out, the second aspect requires to be examined and that is whether the Court has material to hold that these facts led the Chief Minister to entertain feelings of personal hostility to these transport operators because of the aid and support the latter gave to the candidates belonging to the group opposed to him which led to the defeat of his partymen. On this aspect the allegations were that the Chief Minister felt chagrined at the defeat of his partymen and supporters and desiring to wreak his vengeance against the motor transport operators of the western parts of Kurnool, his political opponents, instructed the Corporation to change the order in which the districts should be taken up for nationalisation and had Kurnool taken up first, departing from what had been decided upon, just a little while previously by the Corporation, and that the Corporation gave effect to these instructions and directions by not only taking Kurnool first, but even in that district eliminating the private operators from the western portions of the district who were the political opponents of the Chief Minister. This, it is obvious, would be a matter of probabilities and of the inference to be drawn by the Court from all the circumstances on which no direct evidence can be adduced.

It is, no doubt, true that allegations of *mala fides* and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation, in fact, are made in

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several of the cases which have come up before this and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the court either their denials or their version of the matter, so that the court may be in a position to judge as to whether the onus that lies upon those who make allegations of *mala fides* on the part of authorities of the status of those with which this appeal is concerned, have discharged their burden of proving it. In the absence of such affidavits or of materials, placed before the Court by these authorities, the Court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer. This is precisely the situation in which we find ourselves in the present case.

The learned Judges of the High Court have repelled the allegations contained in the affidavits which we have set out earlier on grounds and for reasons which do not appeal to us. As the learned Advocate-General did not seek to support those grounds and that reasoning we do not consider it necessary to set them out or deal with them. If the reasons given by the learned Judges of the High Court be put aside, the position resolves itself into this that allegations with particularity and detail have been made in the petition. We are here having in mind the allegations we have enumerated and categorised earlier as objective facts. As to these there is no denial at all of them, not even by the Transport Minister who though he filed an affidavit, confined himself to the allegations regarding his having been dictated to by the Chief Minister when he approved the schemes, though it is obvious they are capable of denial and if need be with the same particularity with which they have been made in the petition. The learn-

ed judges of the High Court have not rejected the allegations regarding the objective facts on the ground of their patent improbability or absurdity, nor did the learned Advocate-General make any submission on these lines.

The next question is as regards the inference to be drawn from these facts which in the absence of their denial have to be taken as true. It is here that we have felt the greatest uneasiness, because if the facts which serve as the foundation for the plea of *mala fides* are made out, the only question would be whether the inference of *mala fides* on the part of the Chief Minister would be a reasonable one to draw. It is at this point that we are faced with the necessity of having to proceed without there being any effective answer to the propriety of drawing the inference which the appellants desire. There has been no denial by the Chief Minister, nor an affidavit by any person who claims or can claim to know personally about the truth about these allegations. The Secretary to the Home Department—one Mr. S. A. Iyengar has filed a counter-affidavit in which the allegations we have set out earlier have been formally denied. He says, "I have been expressly instructed and authorised by the Hon'ble the Chief Minister to state that the allegations suggesting personal animus and giving mandate are false and mischievous and have been deliberately made to create an atmosphere of sympathy". The learned Advocate-General did not suggest that the Court could act upon this second-hand denial by the Chief Minister, as the statement by Sri S. A. Iyengar is merely hearsay. We are, therefore, constrained to hold that the allegations that the Chief Minister was motivated by bias and personal ill-will against the appellants, stands unrebutted.

The learned Advocate-General realising this position, desired us to proceed on that basis and his submission was that assuming that the allegations made against the Chief Minister were made out and that he had bias and ill-will against the appellants, still there was no proof that the Corporation which was an autonomous body was similarly motivated and that unless the appellants were able to establish it, bias or ill-will on the part of the Chief Minister would be irrelevant

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We agree as already indicated that he is right in this submission. This takes us to the consideration of the question as to whether the Corporation carried out the mandate of the Chief Minister as was alleged by the appellants or whether the impugned schemes were formulated by them as a result of the opinion which they themselves formed that they were necessary in public interest for the purposes set out in s. 68-C of the Act. On this matter there is an affidavit by the Corporation denying the allegation made by the appellants that the Corporation acted merely as the tool of the Chief Minister in order to carry out his behest, and it is there asserted that the decision to frame the schemes was taken as a result of the independent opinion formed by them after an examination of the entire question. The acceptability of these rival assertions were debated before us most strenuously during the hearing of these appeals.

Certain facts already set out have a bearing on this question, and these we shall recall. The Anantharamakrishnan Committee had laid down the criteria for determining the order in which areas and routes had to be selected for nationalisation, and applying these principles had drawn up a list of the remaining districts in which nationalisation should be successively taken up. If that order was followed, Nellore would have been the next district to be taken up and the turn of the Kurnool District would have come up after nationalisation of the routes in the Nellore, Chittor and Cuddapah districts were completed. This report had been submitted to the Corporation in February, 1961 and after further detailed examination of these recommendations the Corporation had accepted the recommendation regarding the order of the Districts to be taken up for nationalisation and had embodied this approval in its Administration Report dated March 24, 1962 which was published in April, 1962. It is only necessary to add that the Corporation had also had the routes in Nellore surveyed a little while before. In February, 1962, however, the general elections to the Assembly and the Parliamentary Constituencies had taken place and the allegations of the appellants related to the feelings that arose during the course of elections. The present Chief Minister assumed office as Chief

Minister on March 12, 1962. On April 19, 1962, it is admitted that he summoned a conference of the Corporation and its officials at which, and this also is admitted, he suggested that the nationalisation of bus routes in the Kurnool District should be taken up first. Now the Chief Minister himself made a statement as to what he did at this meeting. It is the case of the appellants that it was the mandate given to the Corporation by the Chief Minister at this Conference that brought about this change in the order of the districts to be taken up for nationalisation and not the independent opinion of the Corporation as to what was needed in the public interest as required by s. 68-C. As regards his part at the conference, the Chief Minister himself stated in the Assembly on July 26, 1962:

> "To say that the Corporation will do everything for the simple reason that it is an autonomous body, and also to say that we will not at all interfere, is not fair. It will not be fair. Now and then we shall have conferences. For example, the Corporation wanted to nationalise Chittoor district. We had discussions. Kurnool is surrounded by three nationalised districts; one side Mahaboobnagar, one side Guntur and the other side the district of Nellore which is going to be nationalised. I questioned as to why the district of Kurnool which is surrounded by three nationalised districts is left out, and instead the district of Chittoor which is abutting the borders of Madras and Bangalore is sought to be taken up. They could not explain. I said Kurnool district is a very compact one and three districts around it are nationalised. They thought that was more practicable and reasonable. Therefore they changed their minds. As a result of such discussions, once in a way we (Government) do interfere but will not interfere in day to day administration."

The conference, as stated earlier, addressed by the Chief Minister was on the 19th of April, 1962. This was follow-

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ed by the resolution of the Corporation of May 4, 1962. This ran:

> "The Corporation noted the discussion which took place in the office of the Chief Minister on 19th April, 1962, in regard to programme of nationalisation of Road Transport Services during the Third Five Year Plan period and resolved that during the Third Five Year Plan three more districts in the order mentioned could be nationalised, *viz.*, Kurnool, Nellore and Cuddapah in view of difficult financial position.....Chief Executive Officer explained that as there is a depot at Kurnool and as Kurnool is contiguous to the nationalised districts, it would be easier to nationalise Kurnool rather Nellore district. The nationalisation could be extended to the Nellore district after Kurnool district is nationalised. The Corporation therefore resolved that Kurnool district could be taken up for nationalisation in preference to Nellore."

In the counter-affidavit which the Corporation filed to the writ petition the Chief Executive Officer after denying that the Corporation was actuated by *mala fides* in framing the three impugned schemes, stated that the acceptance by the Corporation of the recommendation of the Anantharamakrishnan Committee was tentative and that it could not fetter them from discharging its powers and duties under the statute. It gave the following reasons for the decision to nationalise Road Transport Services in a part of the Kurnool district in preference to other areas: (1) because there is a Government depot at Kurnool, (2) Kurnool is contiguous to the entire Telangana area which is nationalised and also contiguous to the nationalised area of Guntur. It also stated that the choice was made in the interest of the maintenance of service contiguity and coordination and it added that "the impending completion of the Rangapur Bridge over the river Krishna, which when completed would facilitate the operation of direct services from Hyderabad through Kurnool to the areas beyond." Besides it

asserted that the Corporation which was an autonomous statutory authority was vested with powers under the Road Transport Act and it was, therefore, malicious to allege that the decision by the Corporation to prepare the impugned schemes was either influenced by the Chief Minister or was under a mandate from him and it asserted that in formulating the schemes the necessary opinion under s. 68-C was formed by itself.

The learned Judges of the High Court have accepted this statement, made on behalf of the Corporation and have repelled the attack made on it based on the schemes not having been formulated as a result of the opinion formed by the Corporation itself. The learned Advocate-General commended this approach and this conclusion for our acceptance. He also pointed out that the Anantharamakrishnan Committee had themselves indicated in paragraph 126 of their report that the order in which the new areas will be taken over for nationalisation might be decided by the Government, so that the order in which motor transport in the several districts should be nationalised, was not prescribed by the Committee as a rigid or hard and fast rule, but the order of the districts was treated even by them as a flexible one which was capable of and was intended to be, modified by the Government by making policy decisions on these matters taking into account not merely the finances available for nationalisation but also other relevant matters.

We have given the matter our best consideration, but we are unable to agree with the learned Judges of the High Court in their conclusion. The first matter which stands out prominently in this connection is the element of time and the sequence of dates. We have already pointed out that the Corporation had as late as March, 1962 considered the entire subject and had accepted the recommendation of the Anantharamakrishnan Committee as to the order in which the transport in the several districts should be nationalised and had set these out in their Administration Report for the three year period 1958 to 1961. It must, therefore, be taken that every factor which the Anantha-

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ramakrishnan Committee had considered relevant and material for determining the order of the districts had been independently investigated, examined and concurred in, before those recommendations were approved. It means that upto March-April, 1962 a consideration of all the relevant factors had led the Corporation to a conclusion identical with that of the Anantharamakrishnan Committee. The next thing that happened was a conference of the Corporation and its officials with the Chief Minister on April 19, 1962. The proceedings of the Conference are not on the record nor is there any evidence as to whether any record was made of what happened at the conference. But we have the statement of the Chief Minister made on the floor of the State Assembly in which he gave an account of what transpired between him and the Corporation and its officials. We have already extracted the relevant portions of that speech from which the following points emerge: (1) that the Chief Minister claimed a right to lay down rules of policy for the guidance of the Corporation and, in fact, the learned Advocate-General submitted to us that under the Road Transport Corporation Act, 1950. the Government had a right to give directions as to policy to the Corporation; (2) that the policy direction that he gave related to and included the order in which the districts should be taken up for nationalisation; and (3) that applying the criteria that the districts to be nationalised should be contiguous to those in which nationalised services already existed, Kurnool answered this test better than Chittoor and he, applying the tests he laid down, therefore suggested that instead of Chittoor, Kurnool should be taken up next. One matter that emerges from this is that it was as a result of policy decision taken by the Chief Minister and the direction given to the Corporation that Kurnool was taken up for nationalisation next after Guntur. It is also to be noticed that if the direction by the Chief Minister, was a policy decision, the Corporation was under the law bound to give effect to it (*vide* s. 34 of the Road Transport Corporation Act, 1950). We are not here concerned with the question whether a policy decision contemplated by s. 34 of the Road Transport Act could relate to a matter which under s. 68-C of the Act is left to the unfettered discretion and judg-

ment of the Corporation, where that is the State Undertaking, or again whether or not the policy decision has to be by a formal Government order in writing, for what is relevant is whether the materials placed before the Court establish that the Corporation gave effect to it as a direction which they were expected to and did obey. If the Chief Minister was impelled by motives of personal ill-will against the Road Transport Operators in the western part of Kurnool and he gave the direction to the Corporation to change the order of the districts as originally planned by them and instead take up Kurnool first in order to prejudicially affect his political opponents, and the Corporation carried out his directions it does not need much argument to show that the resultant scheme framed by the Corporation would also be vitiated by *mala fides* notwithstanding the interposition of the semi-autonomous Corporation.

It is also to be noticed that the Chief Minister in his statement to the Assembly stated that when he made an enquiry of the Corporation as to why they did not choose Kurnool as the next district, the officials of the Corporation had no answer to give. It is somewhat remarkable that the Corporation and its officials should have remained silent and tongue-tied notwithstanding that its Vice-Chairman was a member of the Anantharamakrishnan Committee and had as a member thereof considered the entire question in all its aspects and laid down (1) the criteria for determining the order of priority; and (2) by applying these tests had laid down the priorities among the districts and more than this, the entire body of the Corporation had considered the several recommendations of the Committee in their report and while rejecting some had accepted this particular recommendation regarding the order in which the districts should be taken up and this last one had happened within a month or so before the conference addressed by the Chief Minister. If in these circumstances the appellants allege that whatever views the Corporation entertained they were compelled to or gave effect to the wishes of the Chief Minister, it could not be said that the same is an unreasonable inference from facts. It is also somewhat remarkable that within a little over two weeks from this Conference by its

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resolution of May 4, 1962, the Corporation dropped Nellore altogether, a district which was contiguous to Guntur and proceeded to take up the nationalisation of the routes of the western part of the Kurnool district and were able to find reasons for taking the step. It is also worthy of note that in the resolution of the 4th May, 1962, of the Corporation only one reason was given for preferring Kurnool to Nellore, namely, the existence of a depot at Kurnool because the other reason given, namely, that Kurnool was contiguous to an area of nationalised transport equally applied to Nellore and, in fact, this was one of the criteria on the basis of which the Anantharamakrishnan Committee itself decided the order of priority among the districts. As regards the depot at Kurnool which was one of the two reasons set out in the resolution for the choice of that district in the first instance, learned Counsel for the appellants submitted that this reason was one invented to justify the Corporation's action directed against them and to obviate the comment that the reason for the change was political and not for providing an adequate service for the area. He submitted that the so-called depot was merely a garage with a few repairing tools and not any full-fledged repairing workshop. None of the affidavits filed on behalf of the appellants, however, made any allegation regarding the nature of the facility afforded at this 'depot'—and so we are not in a position to act merely on the arguments adduced to us at the bar. It has however to be noticed that the existence of this 'depot' at Kurnool escaped the notice of the Anantharamakrishnan Committee, who in their report have devoted some attention to the need for depots and the equipment these should possess and referred to certain deficiencies which they noticed in the depots which they inspected. The officials of the Corporation did not evidently bring this depot at Kurnool to the notice of the Committee. Again, when in their Administration Report, the Corporation accepted the recommendations as regards the order in which the districts should be nationalised, the existence of this depot at Kurnool seems also to have escaped the attention of the Corporation itself, as a factor to be taken into account in making the choice of the district. But we are basing no conclusion on this feature.

When the Transport Corporation, however, filed the counter-affidavit it was not content to rest merely with the reasons given in the resolution as those which were taken into account in arriving at the decision but added one more, namely, the impending completion of the bridge at Rangapur across the Krishna as a further reason which had been taken into account for arriving at a decision. What the Court is concerned with and what is relevant to the enquiry in the appeal is not whether theoretically or on a consideration of the arguments for and against, now advanced the choice of Kurnool as the next district selected for nationalisation of transport was wise or improper, but a totally different question whether this choice of Kurnool was made by the Corporation as required by s. 68-C or, whether this choice was in fact and in substance, made by the Chief Minister, and implemented by him by utilising the machinery of the Corporation as alleged by the appellants. On the evidence placed in the case we are satisfied that it was as a result of the conference of the 19th April, 1962, and in order to give effect to the wishes of the Chief Minister expressed there, that the schemes now impugned were formulated by the Corporation.

The next submission of the learned Advocate-General was that even assuming the Chief Minister directed the order in which districts were to be taken up for nationalisation, still the scheme framed by the Corporation could not be assailed as not in conformity with the requirements of s. 68-C of the Act so long as the choice of the "area" in which and the routes in it to be run by the Corporation was made by them alone. This argument proceeds from the circumstance that even taking it that the Chief Minister directed the Corporation to take up the nationalisation of the routes in the Kurnool district in the first instance, there was no allegation that he gave any direction regarding the area in the district and the routes. We fail to see any force in this argument. If the choice of the district was that of the Chief Minister, the fact that within the area of the district pointed out to them, the Corporation selected some area within the district and the routes within that area,

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cannot on any reasonable construction of s. 68-C be a sufficient compliance with the statute. We are disposed to read the word 'area' in the section as meaning such 'area' in the entire State as the Corporation should consider proper and not as the learned Advocate-General would read as area within a circumscribed part of the State determined by an outside authority.

Besides, there is really little or no explanation forthcoming from the Corporation for choosing the western part of the Kurnool district for the exclusion of the private operators in the first instance. The principal allegation regarding *mala fides* on the part of the Chief Minister made by the appellants was directed to demonstrate that the object of the present schemes was to eliminate operators whose routes lay on the western side of the district. It is also stated in the affidavits that the friends or supporters of the Chief Minister were operating motor transport in the eastern part of Kurnool. Therefore it might be expected that the counter-affidavits filed offered a rational explanation as to why this portion of the Kurnool district was chosen in the first instance in preference to the other portion of the district. Needless to say the resolution of the Corporation of May 4, 1962, offers no assistance in this matter and as we have said earlier though the counter-affidavits contained a denial of the allegation that the Corporation was acting at the behest of the Chief Minister, there is no explanation for the choice of the western portion. Our conclusion therefore is that the impugned schemes are vitiated by the fact that they were not in conformity with the requirements of s. 68-C.

The next question is as regards the approval of the schemes by the Transport Minister under s. 68-D(3). It was the case of the appellants that just like the Corporation, the Transport Minister also merely carried out the wishes of the Chief Minister and that therefore the approval by the Transport Minister must be held to be vitiated by the *mala fides* of the Chief Minister. In regard to this, however, two matters have to be remembered. The first is that there is nothing on the record to show that the Chief

Minister influenced his colleague and beyond the fact that both the Chief Minister as well as the Transport Minister are members of the same Council of Ministers, there is nothing to indicate that the Chief Minister influenced the Transport Minister. The other matter is that the Transport Minister had stated on oath that in considering the objections under s. 68D(3) and approving the schemes he was uninfluenced by the Chief Minister. We, therefore, consider that there is no basis for holding that the Transport Minister's approval of the schemes does not satisfy the requirements of the law.

In view that we take the schemes have to be set aside as not in conformity with s. 68-C of the Act, the other objections raised do not require consideration but in view, however, of the arguments addressed to us on them we shall briefly deal with them.

The next point that was urged was that the schemes were not in conformity with s. 68-C of the Act for another reason. A scheme to be published by the Transport Undertaking is required by s. 68-C to give "particulars of the nature of the services proposed to be rendered and such other particulars respecting thereto as may be prescribed", prescribed, of course, meaning "prescribed by rules". These particulars, it is obvious, are required to be set out in the scheme, so that (a) transport operators running vehicles on the routes might know that they are affected by the scheme and might, if they see sufficient reason therefor, prefer objections under s. 68-D(1); and (b) the operators and others formulate their objections properly, particularly in the matter of pointing out the deficiency or inadequacy of the schemes or the services proposed to be run under the schemes for the approving authority to consider. It was urged on behalf of the appellants that the impugned scheme did not furnish particulars required by this provision. The draft scheme, as published under s. 68-C, and that as approved finally, contains six columns which are respectively headed (1) Serial Number; (2) Name of the Route, indicating its course; (3) Length of the route in miles; (4)

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Number of vehicles proposed to be operated on each route; (5) Total number of trips each way to be performed on each route; and (6) The nature of the services. Now, columns 4 and 5 do not contain the precise number of vehicles proposed to be operated or the precise total of the trips each way to be performed daily. But on the other hand each of these columns is sub-divided into two—4 and 4(a), 5 and 5(a). Under column 4 is given the minimum number of vehicles proposed to be operated and under 4(a) the maximum number. Similarly column 5 sets out the minimum number of total trips each way and 5(a) the maximum number. Now in several of these the variation between the maximum and the minimum in columns 4 and 5 is 1 to 2 *i.e.* if one is the minimum two is the maximum, and similarly if two is the minimum, four is the maximum, but there are others in which the variation is even more pronounced. for instance, in scheme number one, in serial number 15 the minimum is one and the maximum three in both columns 4 and 5 and in serial number 16 the proportion between, the maximum and minimum is even more pronounced for in column 4 it is 1 to 4. The position is similar in regard to serial No. 20. The objection that is raised to this method of specifying the maximum and the minimum of the number of vehicles which will be put on the route and the number of trips which these vehicles will operate is, that one of the objects of the schemes is the provision, among others, of an adequate road transport service. It is common ground that the persons affected by the schemes may object to the scheme on the ground that it does not offer an adequate service and that this would be a relevant matter for consideration by the authority approving the scheme. It is, therefore, urged on behalf of the appellants that the schemes as promulgated which disclose not the actual number of vehicles that would run or the number of trips which the vehicles would make, do not enable the affected objectors to raise their objections to the adequacy of the service proposed and similarly do not afford requisite information to the approving authority under s. 68D(3) to decide whether to approve the scheme or not. Besides this general objection, it is pointed out that the specification of a minimum

and a maximum in columns 4 and 5 is contrary to what has been prescribed by the Andhra Pradesh Motor Vehicles Rules, 1957, made in relation to "the particulars to be contained in schemes under Ch. IV-A." Rule 4 of these Rules which have statutory force under s. 68-C requires draft schemes and approved schemes to contain *inter alia* "the number of vehicles proposed to be operated on each route and the total number of trips to be performed daily on each route." By a rule framed on the 26th of December, 1958, the State Government framed a rule numbered as Rule 5 of these Rules which reads:

> "5. The State Transport Undertaking *may* at its discretion, vary the frequency of services on any of the notified routes or within any notified area having regard to the needs of traffic during any period, either by increasing or decreasing the number of trips of the existing buses or by increasing or decreasing the number of buses."

The validity of Rule 5 was one of the matters that was raised for consideration by this Court in *Dosa Satyanarayanamurty etc.* v. *The Andhra Pradesh State Road Transport Corporation*(1) and this Court held that Rule 5 was repugnant to s. 68-E which reads:

> "Any scheme published under sub-s. (3) of s. 68-D may at any time be cancelled or modified by the State Transport Undertaking and the procedure laid down in s. 68-C and s. 68-D 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 modifications proposed were a separate scheme."

and struck it down. Thereafter rule 5 was deleted, but rule 4 remains as we have set out. The question for consideration is whether the prescription of maxima and minima in columns 4 & 5 is in conformity with the requirements of Rule 4. It was submitted on behalf of the appellants (1) that the reason why these maxima and minima were put

(1) [1961] 1 S.C.R. 642.

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down in the schemes, contravening Rule 4, was in reality to avoid the operation of s. 68-E and to get over the decision of this Court striking down Rule 5 and that for the same reason which underlay the decision of this Court in *Dosa Satyanarayanamurty's* case(1) the prescription of maxima and minima contravened s. 68-E as it operates in no way dissimilar to Rule 5 and that as this vice pervades the entirety of the scheme as published, all the three schemes should be set aside. In further support of their submission the appellants relied on the affidavit filed by the Assistant Secretary to the Transport Department who stated that the prescription of maxima and minima was adopted because "it enabled the Corporation to provide adequate services with reference to the public needs, without having to go through the elaborate gamut of modifying the approved scheme for the purpose."

The learned Judges of the High Court have repelled this contention on the ground of the analogy furnished by ss. 46 and 48 of the Act under which applications for State carriage permits by private operators and the permits granted to them are required to state the minimum and maximum number of daily services proposed to be provided in relation to each route or area, was an indication that a scheme specifying the maxima and minima of the number of buses and services was in conformity with and did not contravene Rule 4. The learned Advocate-General adopted the same line of argument and submitted that the language of Rule 4 did not in terms prohibit the specification of a minimum and maximum and that Rule 5 which this Court struck down as being repugnant to s. 68-E was attracted only when the maxima or minima set out in the scheme was departed from. He, however, conceded that the gap between the minimum and the maximum specified in a scheme might be so wide as to render the same a contradiction of Rule 4 but he submitted that the variations in the 3 schemes before us between columns 4 and 4(a) and columns 5 and 5(a) respectively were so slight as not to amount to a failure to fix the number of vehicles to be operated or the trips they would do on the routes.

(1) [1961] 1 S.C.R. 642.

In the case before us in view of the conclusion we have reached that some of the variations between the maxima and the minima in the number of vehicles proposed to be operated on each route are such as, adopting the test suggested by the learned Advocate-General himself, to really contravene Rule 4 we have not thought it necessary to finally decide the larger question, whether the mere prescription of the maxima and minima, particularly for the reasons set out in the affidavit of the Assistant Secretary to the Transport Department, constitutes a violation of s. 68-E as also of Rule 4 of the Motor Vehicles Rules, 1957 as to require the same to be struck down. We might, however, mention in passing that we are not much impressed by the argument based on ss. 46 and 48. It must be remembered that we are concerned with a requirement of Ch. IV-A and under s. 68-B of the Act, not only the provisions of that Chapter but the rules made thereunder are to have effect notwithstanding anything in Ch. IV in which s. 46 and s. 48 occur. This apart, the rule-making authority had the analogy of the provisions of ss. 46 and 48 before it, but yet chose not to adopt the same phraseology as was employed in these sections. Besides, as the provisions of Ch. IV-A invade the rights of private operators to carry on business and is justified as a reasonable restriction on their rights in public interest, it might very well have been considered that a more precise indication should be afforded by the scheme to enable its adequacy to be tested by the quasi-judicial procedure which has to be followed before the scheme becomes effective. However, as stated already, there is no need to decide this matter finally in view of our conclusion that the scheme contravenes Rule 4 even on the test submitted by the Advocate-General. In saying this we have in mind routes 15, 16, 18 and 20 of scheme No. 1 in which the variation in the number of vehicles is 1 to 3, 1 to 4 and 3 to 8 and similarly in scheme No. 2 route No. 1 where the variation is 6 to 12 and in scheme No. 3 route No. 1 the variation is 5 to 9. We might mention that we have taken into account not merely the proportion but the variation in the number. We have set these out as merely illustrative and we have not thought it necessary to make an exhaustive list of all the routes.

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The next objection was that some of the routes included in the scheme were inter-State routes and that under the proviso to s. 68D(3) it could not be deemed to be an approved scheme unless the previous approval of the Central Government had been obtained. We consider this objection as without force. The route which is proposed to be nationalised under the scheme admittedly lies wholly within the State. The right of the private operators to ply their vehicles beyond the State border is not affected by any of the schemes. It would, therefore, follow that the proviso to s. 68-D(3) is not attracted and consequently the scheme does not suffer from the defect alleged.

The next point made was that the language employed to indicate the nature of the service in column 6 of the schemes was vague, with the result that operators who had, in fact, been affected by the scheme understood the words employed as not affecting them and consequently did not make objections as they were entitled to under s. 68-D(2). We have examined the language employed and we consider that the submission does not deserve serious consideration nor we are satisfied that any party was really misled by ambiguous phrasing of column 6 of the scheme. In fact, learned Counsel did not press this objection after the matter was discussed during arguments.

The next series of objections to the schemes are those which arise in Civil Appeals Nos. 771 to 778. The point most strenuously contended related to an illegality which was alleged to have occurred in the implementation of the scheme. Under s. 68-(1) the State Transport Undertaking has to make the application in the manner specified in Chapter IV-A for "a Stage Carriage permit" ..... "to the Regional Transport Authority" and that Authority is directed to grant the permit to the Undertaking notwithstanding anything to the contrary in Ch. IV. In accordance with the provisions of this section the State Road Transport Corporation made an application for the grant of permits to the Regional Transport Authority. The objection raised is that the application had to be made not to the Regional Transport Authority but only to the State Transport Authority which authority alone, it is urged, is competent to en-

tertain applications for the grant of permits where the length of the route is 100 miles or over and such route is over a Trunk Road. Three of the routes in scheme 2 with which Civil Appeal Nos. 773, 776 and 777 are concerned are of a length beyond 100 miles and the roadway on which the route lies are admittedly Trunk Roads. Under Rule 141 of the Madras Motor Vehicles Act Rules permits on routes covering a distance of over 100 miles on Trunk Roads could be granted only by the State Transport Authority. It was this Authority that had granted the permits to operate on these three routes to the respective appellants in these appeals. The argument is that even when a Transport Undertaking applies for a stage carriage permit under s. 68-F(1) it must comply with the provisions of Rule 141. On the basis of this reasoning the appellants in these three Civil Appeals have applied for a writ of prohibition against the Regional Transport Authority before whom the applications have been filed. Section 68-F(1) reads:

> "68-F(1). Where, in pursuance of an approved scheme any State transport undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter IV."

The learned Judges of the High Court have held that the Regional Transport Authority which is specifically mentioned in s. 68-F(1) is empowered to issue the permit to the transport undertaking "notwithstanding anything to the contrary contained in Chapter IV" and that the section rendered the provisions of Rule 141 of the Motor Vehicles Rules inapplicable to cases covered by s. 68-F(1). We find ourselves in agreement with this view. Besides, s. 68-B of the Act enacts:

> "68-B. The provisions of this Chapter and the rules and orders made thereunder shall have effect

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notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any law for the time being in force or in any instrument having effect by virtue of any such law."

Therefore any provisions in Chapter IV which are inconsistent with those contained in Chapter IV-A would to that extent be superseded. No doubt, s. 68-F(1) speaks of an application in the manner specified in Ch. IV which if the words stood alone are capable of being understood as meaning the authority to whom the application has to be made, but as the authority to issue the permit in pursuance of the application is specified as the Regional Transport Authority and as that authority is directed to issue the permit notwithstanding anything in Ch. IV so much of Ch. IV or the Rules made thereunder, which specify the authority to grant the permit as being someone other than the Regional Transport Authority, is to that extent superseded. It was pointed out that under Rule 141 the State Transport Authority was itself vested with the powers of the Regional Transport Authority where the route was of the description mentioned earlier, but this, in our opinion, makes no difference. No doubt, in a State where there is no Regional Transport Authority at all [*vide e.g.* proviso to s. 44(1)], but there is some other authority which functions as the Regional Transport Authority for the purposes of the Act, such an Authority might be that which would be comprehended by s. 68-F(1) but where as in Andhra Pradesh there is admittedly a Regional Transport Authority, we cannot accede to the submission that such authority is deprived of the power to issue a permit by reason of s. 68F(1) merely because the Regional Transport Authority of that area cannot grant permits under Ch. IV

There were certain other points urged in Civil Appeal No. 771 which arose only if the Regional Transport Authority to whom applications under s. 68-F(1) were made, was not competent to entertain application and issue a permit. In view of our conclusion as regards the point urged in Civil Appeal No. 771 of 1963 do not arise.

There remains for being dealt with one minor point which was urged in Civil Appeals Nos. 883 and 884 which we consider entirely without substance. The point was that the description of the route in the scheme was too vague and misleading, so much so that the appellants did not file their objections before the Government. Taking the case of Civil Appeal No. 883, it is by an operator who runs a service from Uravakonda to Adoni. Serial No. 16 of scheme No. 1 describes the route as Adoni to Uravakonda. It was urged that as the scheme notified the route Adoni to Uravakonda but not Uravakonda to Adoni, the appellant thought that his route was not affected. The objection is on its very face frivolous because throughout the scheme, it is only the terminal points that are specified and that specification carries with it and obviously implies that the operation of transport between the two terminii is intended to be nationalised. The complaint in Civil Appeal No. 884 is the same, only the route is different. This completes all the points that are urged before us.

In view of our conclusion that the schemes are vitiated by non-compliance with the requirements of s. 68-C and the Rules made thereunder, we hold that they have to be quashed as not warranted by law.

The appeals are accordingly allowed and the appellants are granted a declaration that the schemes are invalid and cannot be enforced. The appellants would be entitled to their costs here and in the High Court—one hearing fee.

Appeals allowed.

AYYANGAR J.—When the judgment in the above appeals was pronounced on January 27, 1964 the learned Advocate for the appellants brought to our notice the following order passed by this Court on June 10, 1963 when the interim stay of the operation of the schemes which are impugned in the above appeals, was vacated on the opposition by the State Government:

> "Stay vacated on the learned Advocate-General for Andhra Pradesh giving an undertaking that

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in case the appellants succeed, the State will compensate the appellants for the loss incurred by them during the period that the appeals were pending in this Court by reason of the fact that they were not allowed to ply their buses on the routes under the respective permits granted to them. The learned Advocate-General further undertakes that this amount of compensation will be determined in the present proceedings themselves. No order as to costs."

The learned Counsel requested us that we should give some directions in terms of this undertaking. In view of the above we would add the following at the end of the judgment which was pronounced on January 27, 1964:

"In view of the order passed by this Court on June 10, 1963, when the interim order of stay was vacated at the instance of the respondent, recording the undertaking on the part of the State that it would compensate the appellants for the loss incurred by them during the period when the appeals were pending in this Court, there will be a declaration to that effect, and the High Court will determine the amount so payable and pass suitable directions for the payment thereof."

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January, 29

R. CHITRALEKHA & ANR.

v.

STATE OF MYSORE & ORS.

(B. P. SINHA, C. J., K. SUBBA RAO, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR JJ.)

Constitution of India, 1950, *Art.* 166—*If mandatory—List I Entry* 66—*Scope of*—Viva Voce *test for admission in college—If violation of Art.* 14—*Article* 15(4)—*Classification of backward classes—Validity.*