

STANDARD MOTOR UNION PVT. LTD.

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v.

STATE OF KERALA & ORS.

July 30, 1968

[R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Motor Vehicles Act, (4 of 1939), Ss. 68C, 68D and 68E—Scheme nationalising route overlapped by other route operated by private operators—Scheme if of complete exclusion or partial exclusion—Scheme modified without expressly modifying earlier scheme—Validity.

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Kerala Motor Vehicles (State Transport Undertaking) Rules, 1960 r. 3—

The respondent State approved a scheme in form II for nationalisation of certain specific routes after complying with the provisions of ss. 68C and 68D of the Motor Vehicles Act, 1939. The scheme excluded all private operators from the notified routes. The notified routes formed part of highways, having common road sectors and private operators continued to operate on the highways. The appellant unsuccessfully filed writ petition in the High Court to quash the scheme. In appeal to this Court, the appellant challenged the validity of the scheme on the grounds that (i) the scheme was a complete exclusion scheme and should have been in form I and as it was in form II it was in contravention of Rule 3 of the Kerala Motor Vehicles (State Transport Undertaking) Rules, 1960 read with s. 68C of the Act; and (ii) since there were earlier schemes, they could not be modified by the impugned scheme without complying with the provisions of s. 68E. Dismissing the appeal, this Court :

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HELD : (i) From the language of s. 68C and r. 3 it appears that a complete exclusion scheme in relation to any area of route would be a scheme which completely excludes the existing road services of private operators on the area or route in question. The route includes the highway over it runs. If other existing services are allowed to continue over a part of the highway relating to the notified route, the scheme is not one of complete exclusion.

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The impugned scheme did not exclude the road transport services of other existing routes which overlapped many sectors of the highways relating to the notified routes. In spite of the scheme the public could get services on the common road sectors from the private operators who continued to operate the highways. Therefore, the scheme was not in complete exclusion of existing road transport services in respect of notified routes and was not required to be in form I. [466 G-H, 467 D]

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Nilkanth Prasad & Ors. v. State of Bihar, [1962] Suppl. 1 S.C.R. 728 at 737; *Kondala Rao v. Andhra Pradesh S.T.C. Corporation*, A.I.R. 1961 S.C. 82, followed.

(ii) On the promulgation of the new scheme the earlier schemes stood modified *pro tanto*. As the procedure laid down in ss. 68C and 68D were followed the conditions of s. 68 were satisfied. S. 68E does not require that the new scheme should expressly say that it cancels or modifies the earlier schemes. [467 G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 921 of 1968.

Appeal by special leave from the judgment and order dated January 8, 1968 of the Kerala High Court in Writ Appeal No. 79 of 1967.

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A *S. V. Gupte and A. S. Nambiar*, for the appellant.

Sarjoo Prasad and M. R. K. Pillai for respondent No. 1.

*C. M. Kuruvilla, Sardar Bahadur, Vishnu Bhadur Saharya
Yougindra Khushalani*, for respondent No. 2.

B The Judgment of the Court was delivered by

Bachawat, J. The appellant challenges the scheme of nationalisation of road transport services in respect of 9 routes in the districts of Ernakulam and Kottayam. Chapter IVA of the Motor Vehicles Act, 1939 deals with nationalisation of road transport services. Section 68C provides for the preparation and publication of a draft scheme of nationalization of road transport services in general or any particular class of such service in relation to any area or route or portion thereof whether to the exclusion, complete or partial, of other persons or otherwise. Section 68D provides for the filing of objections of persons affected by the scheme, for the consideration of the objections by the government, for modification or approval of the scheme by the government and for publication of the approved or modified scheme. Section 68E provides that a scheme finally settled under sec. 68D may at any time be cancelled or modified by the State transport undertaking. The procedure laid down in secs. 68C and 68D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be modified as if the modification proposed were a separate scheme. For the purpose of giving effect to the approved scheme in respect of a notified area or a notified route sec. 68F(2)(iii) authorises the Regional Transport Authority to modify the terms of an existing permit so as to curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route. Section 68 I authorises the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV A and in particular to provide the form in which any scheme or approved scheme may be published under secs. 68C and 68D. In exercise of its powers under sec. 68 I the State Government framed the Kerala Motor Vehicles (State Transport Undertaking) Rules, 1960. Rule 3 provides that every proposed scheme shall be in form I when it is in complete exclusion of existing road transport service, in form II when the scheme is in partial exclusion of existing road transport service, in form III when the scheme is in supplementation of existing road transport service and in form IV when the scheme is to modify an existing scheme.

H On December 15, 1965 the Kerala State Transport Corporation published a draft scheme in form II for nationalization of 9 specified routes in the districts of Ernakulam and Kottayam in partial exclusion of the existing passenger transport services

concerned, giving the particulars of the stage carriage permits to be excluded. On October 17, 1966 after hearing the objectors the State Government approved the scheme. On October 24, 1966 the government published the approved scheme. On December 7, 1966 the appellant filed a writ petition in the Kerala High Court to quash the scheme. V. P. Gopalan Nambiyar J. dismissed the petition. A Divisional Bench of the High Court affirmed his order. The present appeal has been filed after obtaining special leave.

The appellant's contention is that the impugned scheme is a complete exclusion scheme and should have been in form I and as it is in form II it is in contravention of Rule 3 read with sec. 68C and is therefore invalid. Let us examine this contention. The scheme is in respect of 9 specified routes. The scheme excludes all private operators holding stage carriage permits for those routes. Take the route Kottayam-Ernakulam. All the private operators holding stage carriage permits for that route are excluded. It is therefore argued that the scheme is one of complete exclusion. But it appears that there are 33 existing routes partially overlapping the notified routes. The 33 existing routes and the notified routes have many common road sectors. The scheme does not interfere with the services on the 33 routes. In spite of the scheme the public can get services on the common road sectors from the operators running on the 33 routes. Take the notified Kottayam-Ernakulam route. There is an existing Kottayam-Muttupetty route. A portion of the Kottayam-Muttupetty route overlaps the Kottayam-Ernakulam route. The impugned scheme does not exclude the services of the operators of the Kottayam-Muttupetty route on the road sector common to the Kottayam-Ernakulam and Kottayam-Muttupetty routes. On these facts, it is impossible to say that the impugned scheme is one of complete exclusion.

Section 68C envisages schemes of road transport services in relation to any area or route or portion thereof whether to the exclusion, complete, or partial of other persons or otherwise. Rule 3 of the Kerala Motor Vehicles (State Transport Undertaking) Rules, 1960 speaks of schemes of road transport service in complete or partial exclusion of existing road transport services. From the language of sec. 68C and Rule 3 it appears that a complete exclusion scheme in relation to any area or route would be a scheme which completely excludes the existing road services of private operators on the area or route in question. The route includes the highway over which it runs. If other existing services are allowed to continue over a part of the highway relating to the notified route the scheme is not one of complete exclusion.

- A A stage carriage permit is granted under secs. 46 to 48 for a specified area. The words "roads included in the proposed route or area" in sec. 47(1)(f) implies that a route includes the road or the physical track. Section 68F(2)(iii) implies that a portion of the route of an existing permit may relate to a notified route. This happens when the two routes have a common road sector. Section 68F(2)(iii) authorises the exclusion of the common portion of the road from the existing permit for giving effect to the scheme for the notified route. For the purposes of Chapters IV and IVA there is no practical distinction between the route or the notional line from one terminus to another for which the permit is granted and the road over which the transport services are run and operated. As pointed out in *Nilkanth Prasad & Ors. v. State of Bihar*⁽¹⁾ "the distinction between "route" as the notional line and "road" as the physical track disappears in the working of Chap. IVA." The route is also an area. (see *Kondala Rao v. Andhra Pradesh S.T.C. Corporation*⁽²⁾ & *C.P.C. Motor Service v. State of Mysore*⁽³⁾). The impugned scheme does not exclude the road transport services of the 33 existing routes over many sections of the highways relating to the notified routes. It follows that the scheme is not in complete exclusion of existing road transport services in respect of the notified routes and is not required to be in form I. There is no infirmity in the scheme because it was in form II.
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- E The impugned scheme is in partial exclusion of operators from Kottayam-Ernakulam and Kottayam-Eratupettah routes and 7 other routes. It is common case that there were earlier schemes relating to the Kottayam-Ernakulam and Kottayam-Eratupettah routes. In so far as the impugned schemes excludes private operators from those routes, it has the effect of modifying the earlier schemes. The appellant's contention is that the impugned scheme is invalid as the modification of the earlier schemes were made without complying with the provisions of sec. 68E. In our opinion, this contention is baseless. The new scheme has been proposed and approved after following the procedure laid down in secs. 68C and 68D. In so far as the new scheme modifies the earlier schemes, the modifications could be made under sec. 68E. As the procedure laid down in secs. 68C and 68D were followed the conditions of sec. 68E were satisfied. 68E does not require that the new scheme should expressly say that it cancels or modifies the earlier schemes. On the promulgation of the new scheme the earlier schemes stand modified by implication *pro tanto*.
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- H A scheme to modify an existing scheme simpliciter is required by Rule 3 of the Kerala Motor Vehicles (State Transport Under-

(1) [1962] Suppl. 1 S.C.R. 728 at 737.

(2) A.I.R. 1961 S.C. 82 at 93.

(3) [1962] Suppl. I.S.C.R. 717; A.I.R. 1966 S.C. 1661.

taking) Rules, 1960 to be in Form IV. The impugned scheme was in Form II as it was in partial exclusion of the existing road transport service. Such a scheme could not be in form IV. The partial exclusion scheme was rightly proposed in form II and when approved it had the effect of modifying the earlier schemes.

Counsel suggested that the approval of the scheme by the State Government on October 17, 1966 was defective as the Government was merely of the opinion that the proposed scheme was necessary to provide efficient, adequate and co-ordinated road transport services and it did not form the opinion that the scheme was necessary to provide economical road transport service. The point was not taken in the courts below and we therefore indicated in the course of the arguments that the appellant will not be permitted to raise this point at this late stage. Several other objections were taken in the courts below but they are not pressed in this Court.

The appeal is dismissed with costs.

Y.P.

Appeal dismissed.