JUDGMENT

[WP(C) Nos.17469/2023, 1253/2024, 18105/2023, 18290/2023, 18342/2023, 18654/2023, 18701/2023, 19084/2023, 19823/2023, 20515/2023, 20710/2023, 20747/2023, 20903/2023, 20959/2023, 21007/2023, 21172/2023, 21199/2023, 21269/2023, 21533/2023, 21605/2023, 21606/2023, 21853/2023, 21939/2023, 22187/2023, 22323/2023, 22445/2023, 22494/2023, 23012/2023, 23837/2023, 24655/2023, 24862/2023, 26193/2023, 28457/2023, 30995/2023, 31061/2023, 3195/2024, 35646/2023, 35839/2023, 6606/2024, 6646/2024, 37380/2023, 7452/2024, 8068/2024, 8401/2024, 8829/2024, 9496/2024, 40269/2023, 40433/2023, 9958/2024, 43046/2023, 13667/2024, 16201/2024, 16267/2024, 16276/2024, 17286/2024, 17642/2024, 18391/2024, 19418/2024, 20801/2024, 21405/2024, 38046/2024]

The present batch of writ petitions have been filed by the private stage carriage operators impugning the Scheme framed in the exercise of the powers conferred under Section 100(2) of the Motor Vehicles Act, 1988 (the MV Act for short) r/w Clause (b) of Rule 246 of the Kerala Motor Vehicles Rules, 1989, for passenger road transport service on the routes

which would be run and operated exclusively by the Kerala State Transport Undertaking. The said scheme has been placed on record as Ext.P14 in W.P(C) No. 18290 of 2023.

2. In all these writ petitions, almost identical facts and questions of law are involved, and therefore, the facts of the lead petition, W.P (C) No. 18290/2023, are taken note of for the purposes of deciding the issue involved in these batch of writ petitions.

3. The petitioners in these writ petitions are the existing stage carriage operators, conducting their services on the routes for which the impugned scheme has been framed. Under the said scheme, the length of the routes of the petitioners' stage carriage operation has been restricted to 140 Km, and the petitioners would not be able to apply for renewal of permits in view of the notifications issued.

4. As per Rule 2(oa) of the Kerala Motor Vehicle Rules 1989(the KMV Rules for short), 'Ordinary limited stop service' means a service having a distance of not more than 140 Kms, with one or more stops in every stage. Rule 2(ua) defines a 'Super Deluxe Service' means a service

that is operated by a fleet owner on a route having a distance of not less than 300 kms. As per Rule 2(ub), 'Super Express Service' is the service operated by a fleet owner on a route having a distance of not less than 200 kms. Rule 2(uc) defines a ' Super Fast service' as one operated by a fleet owner on a route having a distance between 150 kms and 450 kms. As per Rule 2(ea), 'Fast Passenger Service' is a service that is operated by a fleet owner with limited stops on a route having a distance of not less than 70 Kms.

5. Under the aforesaid rules, thus an 'ordinary service' can operate upto 140 kms and all other classes of services are exclusively reserved for the fleet owners. The aforesaid Rules came up for consideration before the Division Bench of this court in O.P No. 8235 of 1999. Vide the judgment dated 30.06.2003, this court struck down the word '***fleet owner'***. This court was of the view that except for KSRTC, there was no other person/entity in the entire State, who could be said to be the ***fleet owner***. Therefore, the definition of '***fleet owner'*** excluded everyone except the KSRTC for undertaking any other service, except the

ordinary service. This would be violative of Articles 14 and 19 1(g) of the Constitution of India. This court was of the view that such a definition of 'fleet owner' was arbitrary unreasonable and militates principle of the equality principle under Article 14 of the Constitution of India. Therefore, the definition clause contained in Rule 2 (cb) was found to be arbitrary and the same was quashed.

6.Brief Facts

A) In exercise of the powers conferred under section 99 of the MV Act r/w rule 236 of the KMV Rules, the State Government published in the Official Gazette dated 15.09.2008, a proposal in' Form A' of the Appendix-1 of the KMV Rules relating to a scheme of road transport service (stage carriage service) to be run and operated in KSRTC, in relation to 31 routes, as noted in Annexure of the said scheme. This proposal envisaged the operation of the stage carriage services by KSRTC to the 'partial inclusion' of the existing private services on these 31 routes.

B) The State Government, after considering the objections against

the proposed scheme, published the modified scheme in the Official Gazette dated 14.07.2009 under Subsection (2) of Section 100 of the MV Act r/w rule 239 of KMV Rules. The said scheme was challenged in a batch of writ petitions *inter alia* on the grounds that the approved scheme did not indicate that the objections raised by the existing operators were considered by the State Government and no reasons, whatsoever, have been stated therein for disregarding the objections raised by the existing operators.

C) This court held that the State Government by notifying the approved scheme has substantially complied with the law as laid down in ***B. A Linga Reddy vs. Karnataka State Transport Authority [(2015) 4 SCC 515]***, inasmuch as the proposal was approved not in its entirety but with modification, which would indicate that the objections were considered by the State Government under Section 100(2) and thus the writ petitions were dismissed Vide the judgment in ***Luka Devassia v. Regional Transport Authority [2015 SCC Online KER 13897: 2015 KHC 357]***

Paragraph 23 of the aforesaid judgment would read as under;

> "23. For that reason, if we look at Clause 4 of the proposed scheme, it only contemplated private operators who were granted permits on or before 09/05/2006 to continue till the date of expiry of the respective permits thereafter, the provision indicated that temporary permits alone will be granted to them and that too, if the STU does not apply for permits in the said routes. Now, coming to the approved scheme of 2009 there is a clear indication that the permits issued on or before 09/05/2006 will be allowed to continue till the date of expiry of their permits and thereafter regular permits will be granted to them. Therefore, there is clear indication that a claim for regular permit has been approved in the final notification. Similarly, in the draft notification, provision was made in regard to permits issued after 09/05/2006, stating that it shall not be renewed and neither regular or temporary permit shall be issued under any circumstances. The said situation in the draft notification has been modified by which in regard to persons who had obtained permits after 09/05/2006, there is provision to provide temporary permits on expiry of other regular permits. Of course, being a scheme to exclude other persons, the permit shall operate only till STU replaces the said routes with new services. Therefore, it is clear that substantial modification had been made to the draft proposal and the rights of regular permit holders / private operators had been taken into consideration and they are offered either regular permit in respect of persons who were holding permits prior to 09/05/2006 and temporary permits for persons who were having permits after 09/05/2006. This, by itself, indicates a proper consideration of the materials on record and the objections raised by the petitioners to the draft publication. In regard to the other objections as well, when no change has been effected, it does not mean that their claim has not been considered. Under such circumstances, we are of the view that while considering the objections raised in terms of S.100(2) of the Act, 1988, the Government had considered the objections raised and had modified the scheme substantially. This, by itself indicates compliance of principles of natural justice. Therefore, we do not think that the respondent Government had fallen short of the judgments in G. Nageswara Rao (supra), H. C Narayanappa (supra), Multi Purpose Co - operative Societies (supra) and B. A Lingareddy (supra). Therefore, we are of the view that there is substantial compliance of the provisions under S.100(2) of the 1988 Act and all the contentions urged by the petitioners in this regard fails."

D) As per Clause 4 of the scheme dated 14.07.2009, the existing operators in the private sector only have a limited lease of life and the

continued operation of the services was purely conditional and subject to the State Transport Undertaking not applying for permits in their routes.

E) The State Government on 08.02.2016, in exercise of the power conferred under Section 102(1) of the MV Act r/w Rule 246 (1) published a proposal for modifying the scheme 14.07.2009. The modification proposal was to save all existing permits granted and issued as on 14.07.2009, and permit them to operate as 'ordinary' or 'limited stop ordinary service' without making applicable the maximum distance prescribed for such services under Rule 2(oa) of the KMV Rules. It was further specified that the maximum distance prescribed for such services under Rule 2(oa) shall not apply to 'saved permits'. Exemption from a maximum distance (140 Kms) was necessary to attain the stated objective of saving the permits granted and issued as of 14.07.2009.

F) The said proposed modified scheme was approved vide the notification dated 23.03.2017. However, it was stated that the

maximum distance prescribed for ‘ordinary’ and ‘limited stop ordinary services’ under Rule 2(oa) of the KMV Rules should apply to the saved permits.

G) The said notification 23.03.2017 came to be challenged in batch of writ petitions. This court vide the judgment 20.08.2018 ***in KSRTC v. Saju Varkey [(2018) 4 KLJ 145]*** quashed the Clause 4 of the modified scheme 23.03.2017. it was held that maximum distance of 140 Kms prescribed in Rule 2(oa) KMV Rules would not apply to the ‘saved permits’. In view of the aforesaid judgment, the permit holders of the ‘saved permits’ i.e., the permits granted to the private operators as on 14.07.2009, including the petitioners, became entitled to operate the stage carriage services, as ‘ordinary’ or ‘limited stop ordinary services’ without the stipulation with regard to maximum distance contained Rule 2(oa) of the KMV Rules.

H. After the said judgment in ***Saju Varkey (supra)*** the holders of the saved permits, including the petitioners, herein, applied for the renewal of their respective permits. The same was objected by the

KSRTC relying on an Executive Order issued by the State Government dated 01.07.2020 interdicting the transport authorities for renewing the permits issued to the saved operators, operating on the route exceeding 140 kms in length. The said Government Order dated 01.07.2020 came to be challenged before this court in a batch of writ petitions. While the writ petitions challenging the Government Order dated 01.07.2020 were pending consideration before this court, the State Government, invoking Section 102(1) of the MV Act, published a draft scheme dated 14.09.2020 to further modify the scheme dated 23.03.2017. Clause 4 of the said scheme prescribed that all ' operators of 'saved permit' issued upto 14.07.2009 can operate as ordinary service alone, subject to maximum route length of 140 kms.

I. In the aforesaid scheme, the Government proposed to decline the 'limited stop ordinary services' to 'saved permits. Under the proposed Scheme, the private operators would not operate the route with a length of more than 140 kms. Several objections had been filed against the said scheme.

J. In the meantime, the KSRTC had filed a Writ Appeal No.1156 of 2022 against the judgment in ***KSRTC vs. Saju Varkey*** (supra), and an interim order was granted by the Division Bench. Accordingly, the Secretary, RTAs declined to issue temporary permits to the private stage carriage operators for more than 140 Kms. However, the Government issued a notice with direction to grant temporary permits to the private operators for a duration of four months, irrespective of the route length. Accordingly, temporary permits to the private stage carriage operators for more than 140 Kms were issued, and they continued their operations. This court also modified the earlier interim order vide its order dated 12.04.2023 in W.A No.1156 of 2022; it was directed that those operators who had valid permits as of the date of the disposal of the writ petitions should continue to enjoy the temporary permits till further orders were passed in these matters. The challenge to this order dated 12.04.2023 was made before the Supreme Court in SLP (Civil) No.9112 of 2023. On the basis of the said interim order, the RTA issued temporary permits, and the stage

carriages with a route length of more than 140 Kms were permitted to continue. Thereafter, the State Government issued a final notification for publishing the scheme dated 03.05.2023 / 04.05.2023, which is the subject matter of challenge before this Court.

7. Submissions:-

The learned counsel for the petitioners have advanced the following primary submissions, challenging the final notification dated 03.05.2023 / 04.05.2023.

i. There is nothing on record to suggest that any consideration was given to the objections raised by the petitioners against the proposed scheme, except for stating in the notification that the objectors were heard. There is no separate record of proceedings that would disclose how the objections were considered and disposed of. It is therefore, submitted that in absence of consideration accorded to the objections to the proposed modification of the existing scheme, final notification dated 03.05.2023 /04.05.2023 cannot be said to have been issued in compliance with the requirement of the law as

per Chapter VI of the Motor Vehicles Act, 1988, particularly Section 102 of the Act.

ii. Section 102(2) mandates the State Government to publish any modification proposal of the existing scheme in the Official Gazette and in one of the newspaper of regional language having circulation in the area which is proposed to be covered by such modification, together with the date, not less than 30 days from the publication in the Official Gazette and time and place where the representations received in this behalf will be heard by the State Government. It is also submitted that under Rule 246 of the KMV Rules, any scheme by the State Government under Section 102 (1) of the MV Act for modifying an approved scheme, the proposal and final notification are required to be published in Form (E) and in Form (F) of the Appendix -I of the KMV Rules respectively.

iii. Form (E) prescribes the time, date, and place of hearing given to the objectors. The draft scheme published to modify the existing scheme in Form (E) did not prescribe time, date, and place of hearing

of the objections. Therefore, the said modification proposal itself was invalid / defective as it was against the mandatory requirement of the rules. Several persons could not object to the draft scheme nor did participate in the hearing in absence of date, time and place in Form 'E'. Therefore, the final notification is bad in law and liable to be set aside as the draft notification was a defective notification.

iv. The mandate of Section 102 is for the State Government to modify or cancel an existing scheme in the public interest, which would suggest that after complying with the mandatory requirements under Section 102 r/w relevant Rules, the final notification should be published immediately. In the present case, the draft notification was issued on 14.09.2020, and the final notification was published on 04.05.2023, which would suggest that there was no public interest involved in modifying the existing scheme.

V. On the other hand, Adv. Renjith Thampan, the learned Senior counsel assisted by Adv. P.C Chacko, appearing for KSRTC has submitted that the final scheme has been published strictly in

accordance with the mandate of the law as prescribed under the MV Act and the Rules made thereunder. The objections were invited and objectors were heard. After giving consideration to their objections, the authority did not find any substance in their objections and the final notification dated 03.05.2023/ 04.05.2023 was published. The final notification would disclose that the objections were considered. Law does not require that detail reasons should be given for rejecting the objections. If the final notification indicates that objections have been considered, it is sufficient compliance of law and absence of reasons would not make the notification bad in law. It is further submitted that Rule 246 of KMV Rules contemplates issuing the final notification in Form 'F'. The final notification has been issued strictly as per requirement of Form 'F'. Therefore, there has been sufficient compliance of the provisions of the law.

VI. Learned Senior Counsel for the respondents has further submitted that unlike Section 100, there is no time limit prescribed for publication of the final scheme under Section 102. Therefore, the

delay in publication of the final notification would not make the notification bad in law.

VII. Adv. P. Santhosh Kumar, Special Government Pleader (Motor Vehicles), Adv. S. Gopinathan, the learned Senior Government Pleader and Adv. V.S Sreejith, learned Government Pleader appeared in all cases for State have made similar submissions as advanced on behalf of the KSRTC.

8. Relevant Provisions:-

Before adverting to the rival contentions and submissions advanced on behalf of the parties, it is appropriate to take note of the statutory scheme under the MV Act, and the Rules made thereunder. Under Chapter VI, the Government has the power to prepare the scheme for road transport services of State Transport Undertaking and the power to cancel or modify such a scheme as per the provisions of Chapter VI and the Rules made thereunder.

9. Section 99 prescribes, “if the State Government is of the considered opinion that for the purposes 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 the State Government may formulate proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars. This proposed scheme is to be published in the Official Gazette and not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme."

10. The objections to the said proposal are to be received in 30 days from the date of the publication of the draft scheme and the State Government is required to give consideration to the objections after giving an opportunity of hearing to the objectors, and thereafter, the final notification is to be published within an outer

limit of one year from the date of publication of the proposed scheme. Thus, the State Government may create a complete monopoly / partial monopoly on a route/ routes or area for providing transport services in general or in particular class in favour of the State Road Transport Undertaking, if it is of the opinion that the public interest demands such monopoly for providing an efficient, adequate, economical and properly coordinated road transport service in the area or route.

11. Section 102 empowers the State Government to cancel or modify the existing scheme formulated under Section 100 of MV Act.

Section 102 of the Motor Vehicles Act, 1988 would read as under :-

> **"102. Cancellation or modification of scheme.** –
> (1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving
> (i)the State transport undertaking; and
> (ii)any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,
> an opportunity of being heard in respect of the proposed modification.
> (2)The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the

> date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government."

12. From a reading of the provision of Section 102, it is evident that the government may modify at any time an existing scheme to create a partial or complete monopoly in favour of State Road Transport undertaking if the State Government considers it necessary in the public interest to do so. However, before modifying or cancelling the scheme, the State Government is required to give an opportunity to be heard to the State Transport Undertaking and any other persons who, in the opinion of the State Government, is /are likely to be affected by the proposed modifications.

13. Under Section 102(2), the proposed modification scheme is to be published in an Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification together with the date, time and place at which any representation received in this behalf will be heard by the State Government. However, the

time for hearing the representation should not be less than 30 days from the date of the publication of the notification.

14.Under Section 103 of the Act, for the purpose of giving effect to the approved scheme in respect of the notified area or notified routes, transport authorities may refuse to entertain any application for grant or renewal of any other permit, reject any other application as may be pending, cancel any existing permit, or modify the terms of any existing permit.

Section 103 of the Motor Vehicles Act would read as under:-

> **"103. Issue of permits to State transport undertakings.—**
> (1) Where, in pursuance of an approved scheme, any State transport undertaking applies in such manner as may be prescribed by the State Government in this behalf for a stage carriage permit or a goods carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter V.
> (2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route, the State Transport Authority or, as the case may be, the Regional Transport Authority concerned may, by order,—
> (a) refuse to entertain any application for the grant or renewal of any other permit or reject any such application as may be pending;
> (b) cancel any existing permit;

(c) modify the terms of any existing permit so as to—
(i) render the permit ineffective beyond a specified date;
(ii) reduce the number of vehicles authorised to be used under the permit;
(iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.
(3) For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the State Transport Authority or any Regional Transport Authority under sub-section (1) or sub-section (2)."

15.Section 104 further prescribes that after the Scheme is published under Section 100(3) in respect of any notified area or route, the State Transport Authorities shall not grant any permit except in accordance with the provisions of the scheme. However, where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route, in pursuance of the approved scheme, a temporary permit may be granted to any person in respect of such notified area or notified route, subject to the condition that such permit shall be seized to be effective on issuance of permit to the State Transport Undertaking in respect of that area or route.

16.Section 105 provides for compensation and payment thereof. In case an existing permit is cancelled or modified under

Section 103, the State Transport Authority is required to compensate the holder of the permit, the amount of which shall be determined in accordance with the provisions of Section 105(4) & (5)

17.Section 107 empowers the State Government to make Rules to implement the provisions of Chapter VI of the Kerala Motor Vehicles Act.

Section 107 of the Motor Vehicles Act would read us under:-

> **107. Power of State Government to make rules. –**
> (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.
> (2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
> (a)the form in which any proposal regarding a scheme may be published under section 99;
> (b)the manner in which objections may be filed under sub-section (1) of section 100;
> (c)the manner in which objections may be considered and disposed of under sub-section (2) of section 100;
> (d)the form in which any approved scheme may be published under sub-section (3) of section 100;
> (e)the manner in which application under sub-section (1) of section 103 may be made;
> (f)the period within which the owner may claim any article found left in any transport vehicle under section 106 and the manner of sale of such article;
> (g)the manner of service of orders under this Chapter;
> (h)any other matter which has to be, or may be, prescribed"

18. Analysis:-

a. From reading of Section 107, it is evident that, the form in which any proposal regarding a scheme may be published under Section 99, the manner in which the objections may be filed under Section 100(1), the form in which any approved scheme is to be published etc are within the domain of the State Government.

b.In exercise of the powers conferred under Section 107, the State Government has framed the Rules and prescribed the form under the Kerala Motor Vehicles Rules 1989 in (Appendix-I). Rule 246 of the KMV Rules, provides for the manner of publication of the proposal to modify the approved scheme under Section 102 in Form (E) and the final scheme in Form (F) as provided in Appendix-I of the said Rules.

Rule 246 of the Kerala Motor Vehicles Rules, 1989 would read as under:-

> **“246.Modification of approved scheme.-**
> (a) Any scheme by the State Government under subsection (1) of Section 102 of the Act to modify an approved scheme shall be in Form "E" and shal l be published in the Official Gazette and in not less than one daily newsp aper in the regional language circulating in the area involved. A copy of this scheme shall be sent to the State Transport Undertaking and to any other person, who in the opinion of the State Government is likel y to be affected by the proposed modification. Copy shall also be sent to the Secretary of the State Transport Authority and the Regional Transport

> Authority concerned.
> (b) The State Transport Undertaking or the other person concerned may, within thirty days from the date of publication of the scheme in the Gazette, file objections thereto, before the Secretary to Government, Public Works and Transport Department, Government Secretariate, Trivandrum. The objection shall be in the form of a memorandum setting forth concisely the grounds of objection, and shall be signed by the objector or his authorised representative. Six additional copies of the memorandum shall also be sent.
>
> (c) The objection shall be heard by the same authority and in the same manner as provided in Rule 238.
> (d) Any scheme as modified by Government under sub-section (1) of Section 102 of the Act shall be notified in the Gazette in Form "F".”

d.Rule 246 of the KMV Rules, is couched in language that mandates the publication of the proposed scheme and the final scheme in Form (E) & (F) respectively. Therefore, the question that needs to be considered is, when the proposed scheme was not published in compliance with the provisions of Rule 246 in Form (E), then whether the final notification would be invalid as the proposed scheme published was defective and not as per the mandate of Rule 246 of the KMV Rules.

19. Important decisions:-

After taking note of the aforesaid relevant statutory provisions on the subject, it would be appropriate to take note of the relevant case laws on the subject.

20. The Constitutional Bench of the Supreme Court in ***H.C Narayanappa v. State of Mysore and others [AIR 1960 SC 1073 ; 1960 KHC 729],*** while considering the objections to a scheme published by the State Government under Section 68 C of the Motor Vehicles Act, 1939 held that under the provisions of Section 68 D of the Motor Vehicles Act, 1939, the State Government was under a duty to act judicially in considering the objections and in approving or modifying the scheme proposed by the Transport Undertaking.

21.The Supreme Court held that Section 68 D of the Motor Vehicles Act, 1939, conferred upon the persons likely to be affected by the proposed scheme an opportunity to put forth their objections and make representation to the State Government. However, the ultimate order passed by the authority would not be opened to challenge either on the ground that another view could have been possible on the objections or that detailed reasons were not given for upholding or rejecting the contentions raised

by the objectors.

Paragraphs 13 and 14 of the said judgment are extracted hereunder:-

> 13.The plea that the Chief Minister who approved the scheme under S., 68D was biased has no substance. Section 68D of the Motor Vehicles Act undoubtedly imposes a duty on the State Government to act judicially in considering the objections and in approving or modifying the scheme proposed by the transports undertaking. Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation and another(1). It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show. that he is biased, his decision will not be liable to be called in question, merely because he is, a limb of the Government. The Chief Minister of the State has filed an affidavit in this case stating that the contention of the petitioners that he was " biased in favour of the scheme was baseless he has also stated that he heard
> such objections and representation& as were made before him and he had given the fullest opportunity to the objectors to submit their objections individually. The Chief Minister has given. detailed reasons for approving the scheme and has dealt with such of the objections as he says were urged before him. In the last para. of the reasones given, it is stated that the Government have heard all the arguments advanced on behalf of the operators and " after: giving full consideration-to them, the Government have come to (1959) Supp. 1 S.C.R.319 the conclusion that the scheme is necessary in the interest of the public and is accordingly approved subject to the modifications that it shall come into force on May 1, 1959 ". In the absence of any evidence controverting these averments, the plea of bias must fail.
> 14.The argument that the Chief Minister did not give genuine consideration " to the objections raised by operators to the scheme in the light of the conditions prescribed has no force. The order of the Chief Minister discusses the questions of law as well as questions of fact. There is no specific reference in the order to certain objections which were raised in the reply filed by the objectors, but we are, on that account, unable to hold that the Chief Minister did not consider those objections. The guarantee conferred by s. 68D of the Motor Vehicles Act upon persons likely to be affected by the intended scheme is & guarantee of an opportunity to put forth their objections. and to make representations to

> the State Government against the acceptance of the scheme. This opportunity of making representations and of being heard in support thereof may be regarded as real only if in the consideration of the objections, there is a judicial approach. But the Legislature does not contemplate an appeal to this Court against the order passed by the State Government approving or modifying the scheme. Provided the authority invested with the power to consider the objections gives an opportunity to the objectors to be heard in the matter and deals with the objections in the light of the object intended to be secured by the scheme, the ultimate order passed by that authority is not open to challenge either on the ground that another view may possibly have been taken on the objections or that detailed reasons have not been given for upholding or rejecting the contentions raised by the objectors."

22.The Supreme Court thus, held that the opportunity to make representation and be heard in support of it should be real only if the objections were considered using a judicial approach. Detailed reasoning may not be required, but the order must reflect that the authority has considered the objections judicially.

23.In ***Rasid Javed Another vs. State of Uttarpradesh [2010 (7) SCC 781]***, considered the provision of Sections 99,100 and 102 and held that the nationalised scheme published under the Motor Vehicles Act, 1939 will continue until duly modified under the provisions of Motor Vehicles Act, 1988 in accordance with its provisions. It was further held that the Officer appointed

by the State Government to hear objections in respect of the proposed modified scheme under Section 102 (1) & (2) would have limited authority of hearing given to said authority by the State Government and the same cannot be treated as enlarged in its scope and he must confine his activity within the four corners of the powers vested in him. If the authority empowered to hear the objections on behalf of the State Government, as a delegate acts beyond the powers vested in him, his action cannot have any legal sanction unless ratified by the delegator.

24. Section 102 makes it manifestly clear that modification of the approved scheme may be done by the State Government in the public interest after giving the opportunity of being heard in respect of the proposed modification to the State Transport Undertaking and the persons likely to be affected by the proposed modification. If the State Government delegates the power of hearing to an authority, the said authority cannot approve the proposed modification of the approved scheme.

Paragraphs 49 to 51 of the said judgment are extracted hereunder: -

> "49. On behalf of the appellants, it was contended that in the proposed modification published in the Official Gazette on 16-4-1999, the authority to hear the objections/representations was given to Shri Zamiruddin, Special Secretary and Additional Legal Remembrancer and the said Hearing Authority after hearing the objections of the affected persons and UPSRTC approved the proposed modification and rejected the objections received in this regard and the approval by the Hearing Authority of the proposed modification by his order dated 11-10-1999 is the approval of the State Government.
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> 50. Is the order dated 11-10-1999 of the Hearing Authority approving the proposed modification published in the Official Gazette dated 16-4-1999, an order of the State Government modifying the approved Scheme of 1993 under Section 102(1) of the 1988 Act? The answer has to be in the negative because Shri Zamiruddin was given authority to hear the representations received by the State Government to the proposed modification but no authority was given to him to approve the proposed modification or modify the approved scheme. The Notification dated 16-4-1999 does not empower the Hearing Authority to approve or modify the scheme; he has only been empowered to hear the objections.
>
> 51. That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in Gullapalli Nageswara Rao but based on such principle the limited authority of hearing given to the Hearing Authority by the State Government cannot be treated as enlarged in its scope. A delegatee must confine his activity within four corners of the powers invested in him and if he has acted beyond that, his action cannot have any legal sanction unless ratified by the delegator."

25.The Supreme Court ***in B. A Linga Reddy vs. Karnataka State Transport Authority [(2015) 4 SCC 515]***, after considering the provisions of Chapter VI of the M V Act and

Sections 68 C to 68 E of the Kerala Motor Vehicles Act, 1939, held that the modification of a scheme is a quasi-judicial function and while modifying or canceling a scheme, the State Government is duty bound to consider the objections and give reasons either to accept or reject them. It is the duty of the State to give reasons and to pass a speaking order to exclude the arbitrariness in action. The State is supposed to act in the public interest while exercising powers under Section 102. The requirement of proper hearing, consideration of objections judicially and passing reasoned order pursuance of the objections are the mandatory requirements of the law and non compliance therewith would render modification/cancellation of the scheme invalid.

Paragraph 17 of the said judgment is extracted hereunder:-

> "17. It is apparent from the provisions that the scheme is framed for providing efficient, adequate, economical and properly co-ordinated road transport service in public interest. Section 102 of the Act of 1988 does not lay down the requirement of recording any express finding on any particular aspect; whereas

> the duty is to hear and consider the objections. It requires the State Government to act in public interest to cancel or modify a scheme after giving the State Transport Undertaking or any other affected person by the proposed modification an opportunity of hearing. The State is supposed to be acting in public interest while exercising the power under the provision. However, that does not dispense with the requirement to record reasons while dealing with objections. Modification of the scheme is a quasi-judicial function while modifying or cancelling a scheme. The State Government is duty-bound to consider the objections and to give reasons either to accept or reject them. The rule of reason is anti-thesis to arbitrariness in action and is a necessary concomitant of the principles of natural justice."

26. Conclusions:-

From the impugned scheme, it is evident that there are no reasons even in brief coming forth for rejecting the objections filed by the petitioners to the proposed scheme dated 14.09.2020 except for the saying that the objections were considered, and objectors were heard as mentioned in the final impugned notification dated 03.04.2023 / 04.05.2023.

27.The counter affidavit filed on behalf of the State Government does not disclose any material suggesting in what manner the objections were considered and rejected,

and reasons thereof. The proposed scheme for modification of the existing scheme was published on 14.09.2020 and the modified scheme was published verbatim as the proposed scheme on 03.05.2023 /04.05.2023. If the State Government was of the opinion that the modification of the existing scheme was in public interest, then the final modified scheme ought to have been published immediately after hearing the objectors. Here the final notification came after more than two years and eight months from the date of proposal.

28.Though a scheme cannot be said to be invalid, if it is the same as was proposed. However, the order must disclose that due consideration has been given to the objections, and some reasons must come forth for rejecting the objections. The Supreme Court in the case of ***B. A Linga Reddy (supra)*** held that the State Government acts as a quasi-judicial authority while considering the objections and in absence of

the reasons for rejecting the objections, the final scheme is rendered illegal.

29.I am of the view that the final notification suffers from illegality, inasmuch as there is nothing on record to suggest that due consideration was given to the objections filed by the petitioners and others and that they were rejected by some reasoned order.

30.The submission advanced on behalf of the learned Senior Counsel for the KSRTC that if the scheme is published in Form 'F' of (Appendix-I) of the KMV Rules, it would be sufficient compliance with the requirement of the law, has no force. The final scheme is published in Form (F), but the reasons for disposing/rejecting the objections must come forth from the order passed by the competent authority, who considered the objections and heard the objectors.

31. Even otherwise, as Adv. Gopinathan Nair, pointed out that the proposed scheme was not compliant to the

mandatory requirement of Rule 246 of KMV Rules, inasmuch as the proposed scheme published on 14.09.2020 did not mention the place, date and time for hearing objections, which is the mandatory requirement of Rule 246. The proposed notification in Form 'E' was defective, and therefore, the final notification cannot be said to be in accordance with law. I find substance in the said submission of the learned counsel for the petitioners.

In view of the aforesaid, the batch of writ petitions are allowed and the impugned notification dated 03/04.05.2023, is hereby set aside. However without costs.

Sd/- **D. K. SINGH**

JUDGE

SJ