Before Surya Kant & R.P. Nagrath, JJ.

M/s. VIJAYANT TRAVELS & ANR.—*Petitioners*

versus

STATE OF PUNJAB & ORS.—*Respondents*

CWP No. 15786 of 1999

December 20, 2012

Constitution of India, 1950 - Arts. 14, 19(1)(g) & 19(6) - Motor Vehicles Act, 1988 - Ss. 66, 68, 80, 99, 100, 217, 217A - Punjab Motor Vehicles Rules, 1989 - Rl. 64 - Mini Bus Service Scheme, 2010 - Route Permits - Stage Carrier Permits - Petitioners challenged scheme dated August 9, 1990 formulated u/s 99 of the Motor Vehicles Act, 1988 and subsequent modifications- Directions sought to liberate issuance of permits on non-nationalized routes and issue stage carriage permits as per Chapter-V of Motor Vehicles Act, 1988 - Punjab Mini Bus Service Scheme, 2010 also challenged - Scheme

dated November 3, 1993 formulated by State of Haryana also challenged - Held, overriding effect given to Chapter VI, through Section 98, on Chapter-V and any other law - S.99 is protected by Article 19(6)(ii) - Formation of opinion by State Government should not merely be ceremonial - Should be based on adequate information, facts and figures - Process of formation of scheme not immune from judicial review - Reasonable restriction u/A 19(B) is to strike a balance between freedom u/A 19(1)(g) and social control - Limitation imposed cannot be arbitrary or excessive - S.99 consistent with Art. 19(6)(ii) - Rule cannot be invalidated only because provision had been wrongly quoted - Power of 'modification' of a statute or police not to be construed in parity with power of 'amendment' - Power of modification u/s 102 cannot be invoked to legalize an illegal act taken in defiance of S.99 - Executive cannot resort to recourse which is alien to rule of law - Mini Bus scheme ultra vires S.99 - There can be no scheme for uncertain future operations alone.

Held, that no matter that its commitment for liberal permits manifested in Chapter-V, the Legislature thought it appropriate to give overriding effect to Chapter-VI, through Section 98, on Chapter-V and any other Law, declaring that provisions of Chapter-VI and the Rules or orders made there under shall have effect even if anything inconsistent therewith is contained in Chapter-V or any other law for the time being in force or in any instrument having effect by virtue of such law. It is thus explicit in abundance that whenever a State Government forms an opinion in public interest that the road transport services in relation to any area or route or portion thereof are required to be operated by a State Transport Undertaking (STU), to the partial or complete exclusion of other operators, it may formulate a Scheme subject to the conditions prescribed in Section 99 and such a Scheme, by virtue of Section 98, shall per force put the policy of liberal permits envisaged by Chapter-V in abeyance.

(Para 55)

Further held, that section 99 is indubitably protected by Article 19(6)(ii) of the Constitution and so would be a Scheme formulated there under provided that such Scheme testifies the pre-requisites as mandated by Section 99 only, namely, (i) formation of opinion by State Government

for the need of efficient, adequate, economical and properly coordinated road transport service; (ii) such need is necessary in the public interest; (iii) the road transport service pertains to any area or route or portion thereof; (iv) such identified road transport service(s) should be run and operated by the State Transport Undertaking; and (v) the State Transport Undertaking can run and operate such identified road transport services to the exclusion, complete or partial, of the existing private operators or otherwise. The formation of opinion by the State Government should not merely be ceremonial but be based upon adequate information, facts and figures or survey etc. though sufficiency of such material on record per se may not be a valid ground for the court to interfere in the decision making process. Similarly, the taking over of road transport services by the STUs must be only in public interest and not serve any other purpose. On qualifying these pre-conditions, the road transport services may be taken over by the STUs through a Scheme to the complete or partial exclusion of existing operators.

(Para 56)

Further held, that conversely, no Scheme can be framed for entities other than STUs. The process of formation of a Scheme or the Scheme itself are not immune from judicial review and if in a given case it is found that the process of formation or the resultant Scheme has failed to qualify all the prescribed tests, the presumptive protection of Article 19(6)(ii) cannot be insisted upon. It must be emphasized here that the Constitutional protection can be sought only if the law imposing reasonable restrictions enables the carrying on of any occupation, trade or business "by the State, or by a Corporation owned or controlled by the State", failing which it will be hit by Articles 14 and 19(1)(g) of the Constitution.

(Para 57)

Further held, that the power to impose reasonable restriction under Article 19(6), however, is with a purpose, to strike a balance between the freedom guaranteed by Article 19(1)(g) and the social control permitted by any of its Clauses (2) to (6). It connotes that limitation imposed on a person in the enjoyment of a right could not be arbitrary or of an excessive nature beyond what is required in the interest of the public. The reasonableness

of the restriction thus has to be determined objectively from the stand-point of the interests of the general public and not of those upon whom the restrictions are imposed.

(Para 60)

Further held, that it stands crystallized from the cited decisions and the general principles discussed above that Section 68-C of 1939 Act which was in pari materia with Section 99 of the 1988 Act was expressly upheld by the Hon'ble Supreme Court and the deviation of the State from Fundamental Rights while walking through the tight rope of 'reasonable restrictions' within the meaning of Article 19(6)(ii) of the Constitution has also got a seal of approval in public interest. The supremacy of Chapter-VI over Chapter-V or any other law, in the event of inconsistency, is thus beyond any debate.

(Para 65)

Further held, that the conspectus of the case law which we have briefly discussed, inescapably holds that:

(i)the fundamental right to carry on trade or business within the meaning of Article 19[1][g] is not an absolute right and is subject to not only the reasonable restrictions that the State may impose but also to the law for carrying on any trade, business, industry or service by the State or by a Corporation owned or controlled by the State, whether to the exclusion, complete or partial, of citizens or otherwise;

(ii)Section 99 of the 1988 Act is consistent with Article 19[6][ii] of the Constitution and it has been so upheld in various cited decisions;

(iii)Since the Constitution itself enables the State to legislate and monopolise its control over any trade, business, industry or service to the complete or partial exclusion of the citizens, it is unarguable to say that a Scheme to be formulated under Section 99 of the 1988 Act cannot be to the complete or partial exclusion of private operators;

(iv)Once the State Government formulates a Scheme by following the procedure or the preconditions enumerated in Section 99, such Scheme, notwithstanding anything inconsistent therewith, shall override Chapter-V or any other law for the time being in force;

(v)There are two facets of the legislative policy embodied in the 1988 Act, namely, liberalization of permits to be issued on demand under Chapter-V so as to infuse a healthy competition inter se amongst the private and State-run operators but the other side engraved in Chapter-VI suspends the liberalized policy and creates monopoly in favour of the STUs on the notified routes provided that it is so necessary in public interest;

(vi)Thus when there is a Scheme which in itself is law, the liberal policy of Chapter-V becomes quiescent and the entire field is occupied by the Scheme only;

(vii)If the Scheme has been formulated to the partial exclusion of private operators, the permits in respect of the exempted routes or area or portion thereof shall also be granted under the Scheme only and not under Chapter-V, for the latter becomes latent with the enforcement of the Scheme;

(viii)As regards the notified routes to be operated upon by the STUs, whether labelled as monopoly routes, State Highways etc., the Authorities under the Act have no discretion except to issue permit in favour of the STUs only for such routes save as where the STUs fail to apply for issuance of permits that proviso to Section 104 can be invoked to issue temporary permits to private operators;

(ix)The popular terms of the trade like, 'corridor protection' or 'over-lapping routes' etc. are also to be construed and settled in terms of the notified Scheme.

(Para 79)

Further held, that it is well known that a rule cannot be invalidated only because the provision under which it was promulgated had been wrongly quoted, provided that the Statute otherwise vests the authority with such rule-making power.

(Para 80)

Further held, that the power of 'modification' of a Statute or Policy therefore need not be construed in parity with power of 'amendment' in such Statute or Policy. The expression "modification" essentially is a restrictive connotation which permits superficial, consequential or incidental changes without altering the original characteristic of a Policy. Once Section 99 and

102 are read in conjunction it implies that the basic features of a Policy formulated under Sections 99 & 100, cannot be amended under Section 102 to an extent that the Policy loses its original face or features though nothing precludes the State Government to cancel the previous policy and formulate a new one by following the prescribed procedure. We are constrained to observe and convey our displeasure that instead of travelling through the defined route of Sections 99 and 100 and formulate a new Scheme, State of Punjab has opted for a shorter passage under Section 102 for the substitution of the original Scheme and that too without issuing a composite notification of the 'saved', 'modified' or 'substituted' clause(s) of the Scheme.

(Para 82)

Further held, that Clause (8) added on December 20, 2011 is couched so vaguely with evasive phrases that it may even nullify the binding decisions cited above, and facilitate backdoor entry for illegally issued permits. We say so for the reason that when the very source of power to grant or renew such permits was held illegal or unauthorized, the consequential action taken in exercise of such power cannot be legitimate. The power of 'modification' under Section 102 cannot be invoked to legalise an illegal act taken in defiance of Section 99 of the 1988 Act. The Executive cannot resort to a recourse which is alien to the rule of law nor can it do anything indirectly which could not be done directly. Any favourable inclination shown towards illegally issued permits cannot withstand the test of reasonableness and equality within the meaning of Part-III of the Constitution.

(Para 96)

Further held, that we are satisfied that the Mini Bus Scheme is atently illegal, a colourable exercise of power to protect existing mini bus operators and it ultra vires Section 99 as also the legislative policy of 1988 Act. We say so for the reasons that firstly a Scheme under Section 99 can be formulated only in respect of those areas or routes which are to be exclusively or partially run and operated by STUs. It is the admitted fact and has not been denied by the respondents that none of the STUs in the State of Punjab own mini buses and are not in a position to operate even on a single route included under the 2010 Scheme. Secondly, none of the STUs sent any proposal nor their opinion was sought by the State Government

before formulating the Scheme regarding operation of mini buses by STUs to the complete or partial exclusion of private operators. Where is the question of providing efficient, adequate or economical road transport service to the passenger public when the STUs possess neither mini buses nor have expressed their willingness to run and operate on the identified routes? Thirdly, even after the two years of the Scheme coming into operation, no permit has been granted to any STU for any indicative or monopoly route. However, the private mini bus operators whose operations have been 'protected' are undoubtedly thriving upon their monopoly on such routes. Fourthly, the very coining of phrase "Mini Bus" is alien to the legislative scheme of 1988 Act which either defines "Heavy Passenger Motor Vehicle" [Section 2(17)], "Medium Passenger Motor Vehicle" [Section 2(24)] or, "Light Motor Vehicle" [Section 2(21)] besides "Maxicab", "Motorcab", "Motor Vehicle" and "Omnibus". The definition of word "Mini Bus" given in the Scheme is not in conformity with any of these expressions. Fifthly, the Scheme talks of 'future' mini bus operations by the STUs when nothing is being operated in preasentia. There can be no Scheme for uncertain future operations alone.

(Para 121)

Further held, that to sum up the discussion on different issues formulated by us, we hold as follows:-

i. So long as a Scheme formulated under Section 99 of 1988 Act is operative, no Stage Carriage Permit can be issued under Chapter-V of the 1988 Act;

ii. If the Scheme notified under Section 99 is to the partial exclusion of private operators, the Stage Carriage Permits to the private operators to the extent of their permissibility are to be granted in accordance with the Scheme only and not under Chapter-V of the 1988 Act;

iii. The Scheme formulated by State of Punjab on August 9, 1990 along with subsequent modifications made on October 21, 1997 and December 20, 2011 is a Scheme to the partial exclusion of private operators and since it covers every route in the State of Punjab no area or route can be held to be non-nationalised route to be thrown open under Chapter-V of 1988 Act;

iv. In view of the findings returned in paragraph 90 of this order, the second proviso to Clause (3) of the Scheme as modified on December 20, 2011, having been found contrary to the legislative object of Section 99 of the 1988 Act, is hereby struck down;

v. For the reasons assigned in paragraph 106 of this order, proviso to Clause (10) of the Scheme modified on December 20, 2011 empowering extension of operation of existing permits to an unlimited extent, is hereby struck down;

vi. In view of what has been held or observed in paragraphs 95 & 96 of this order, those Stage Carriage Permits which were granted under Clause (2) of the original Scheme dated August 9, 1990 or under third proviso to Clause (2) or under Clause (7-A) of the Scheme modified on October 21, 1997, namely, the provisions which were struck down by this Court or by the Hon'ble Supreme Court expressly or by implication, are hereby declared illegal and set aside. These illegal permits shall not be renewed or re-validated under the Scheme modified on December 20, 2011;

vii. For the reasons given in paragraphs 96 & 104 of this order, it is directed that the phrase "all existing operations" in Clause (8) & (9) of the Scheme dated December 20, 2011 shall not include the permits issued under those Clauses of the original or the Scheme as modified on October 21, 1997 which stand declared illegal by this Court in Sirhind Bus Service and Maharaja Travels or by the Hon'ble Supreme Court in Jagdip Singh's case;

viii. For the reasons given in paragraph 80 of this order, Rule 128 of the Punjab Motor Vehicles Rules, 1989 does not suffer from any legal infirmity;

ix. In view of our findings in paragraphs 99 to 103 of this order, Section 217-A of the 1988 Act is retroactive in nature;

x. Resultantly, the writ petitions as per their details given in para 2(i) to (iv) of this order are disposed of in above terms, leaving it open for the petitioners to seek consequential relief(s) before an appropriate forum, if so permissible as per this order;

xi. For the reasons given in paragraphs 115 to 123 of this order, the Punjab Mini Bus Service Scheme, 2010 is hereby quashed and mini bus permits issued or renewed illegally, as per the details given in para 123 of this order, are hereby declared illegal, null and void. Consequently, the writ petitions mentioned in para 2(v) of this order are allowed in the above-stated terms;

xii. In view of the conclusions drawn in paragraphs 124 to 130 of this order, it is held that the Scheme dated November 3, 1993 formulated by Government of Haryana along with its Clause (1) alone survives and is still operative, however, its Clause (2) stood struck down by necessary implication whereas Clauses (3) to (7) became redundant after omission of Clause (2) from the Scheme and CWP No.9853 of 2006 is disposed of accordingly;

xiii. For the reasons mentioned in paragraph 134 of this order, we declare that the Stage Carriage Permits issued to private operators under Clause (2) of State of Haryana Scheme dated November 3, 1993 are also illegal and cannot be validated or renewed under a subsequent Scheme. These permits, however, are directed to be treated as temporary permits till the finalization of the proposed Scheme notified on October 1, 2012 or till September 30, 2013, whichever is earlier;

xiv. The CWP Nos.14639, 17643 of 1998 and 6122 of 2000 challenging Scheme dated June 18, 1998 are disposed of as having been rendered infructuous;

xv. The findings by learned Single Judge in LPA Nos.1428, 1429 and 1432 of 2012 that 'there exist no Scheme in State of Haryana' thus cannot be approved, hence the appeals preferred by the State of Haryana are hereby allowed in part and the order passed by the learned Single Judge in directing to issue, extend or renew permits under Chapter-V, is set aside. In case a private operator has been granted additional route permit or the permit has been altered, the same shall also be treated as temporary permit for all intents and purposes.

(Para 136)

M.S. Khaira, Senior Advocate; Sumeet Mahajan, Senior Advocate; D.S. Kamra, Advocate; Dharminder Singh, Advocate; Rajender Sharma, Advocate; P.S. Bawa, Advocate; Vishal Sharma, Advocate; *for the Petitioner(s)*

Amol Rattan Singh, Addl. AG Punjab assisted by Daman Dhir, Advocate.

Ravi Dutt Sharma, DAG Haryana

Baldev Kapoor, Advocate and Rohit Kapoor, Advocate Anupam Singla, Advocate (in CWP-8783-2012) for PRTC/PEPSU

Vijay Rana, Advocate for respondent No.16 (in CWP-13624-2009)

SURYA KANT, J.

(1) This order shall dispose of a bunch of writ petitions which do not necessarily involve identical questions of law or facts. However, the genesis of all the cases is broadly the same and issues involved are so overlapping and thickly tied to each other that we deem it appropriate to decide them through a common order.

(2) For the sake of convenience, we propose to segregate these cases into the following seven groups, out of which five pertain to one or the other Scheme of State of Punjab while the remaining two relate to the Schemes formulated by State of Haryana :-

Punjab Cases

(i) the petitioners in CWP Nos.15786 of 1999; 3547 of 2000; 214 of 2001; 17570 of 2003; 8700 of 2008; 17539, 13624, 15809, 18628 of 2009; 5290 of 2011 seek to strike down the Scheme dated August 9, 1990 formulated by the Government of Punjab in exercise of its powers under Section 99 of the Motor Vehicles Act, 1988, as also the subsequent modifications made in the Scheme on October 21, 1997 or thereafter. They also seek directions to the respondents to liberate the issuance of permits on nonnationalised routes and issue Stage Carriage Permits in accordance with Chapter-V of the Motor Vehicles Act, 1988;

(ii) the petitioner in CWP No. 9826 of 2007 purportedly filed in public interest, besides the relief(s) sought at Sr.No.(i) above, has made various other prayers including the one directing an enquiry to unearth the alleged malpractices indulged into by the concerned officials of the office of State Transport Commissioner etc.;

(iii) the petitioners in CWP Nos.3979, 6021, 13244, 14464, 17367, 17368 of 1998; 17084 & 2077 of 1999; 4001, 4002, 4003, 5780, 5781, 5782, 5783, 7096 & 9254 of 2000 in addition to their prayer to strike down the Scheme dated August 9, 1990, also seek a writ of prohibition restraining the respondents from issuing advertisements for route permits, inviting objections-cum-representations, restoring pre-decisional hearing and granting Permits by adopting pick and choose policy especially when Rule 64 of the Punjab Motor Vehicle Rules, 1989 has already stood deleted;

(iv) the petitioners in CWP Nos.11817, 12220 & 12209 of 2006; 9705 & 21057 of 2008 have prayed for quashing of the order(s) passed by the State Transport Authority, Punjab refusing to consider their applications for the grant of Stage Carriage Permits. They also seek a mandamus for acceptance of their applications and grant route permits applied for by them;

(v) the petitioners in CWP Nos. 5611, 5591, 13557, 20859 & 22820 of 2011; 8783, 17880, 17869, 17876, 19880, 19898, 19899, 19900, 19912 of 2012 seek quashing of the Punjab Mini Bus Service Scheme, 2010 notified on May 19, 2010 as it allegedly *ultra vires* the provisions of the Motor Vehicles Act, 1988 and also the Constitution of India. The consequential prayer to issue permits in their favour for the routes they applied for has also been made.

Haryana Cases

(vi) The petitioners in CWP Nos.14639, 17643 of 1998 and 6122 of 2000 seek quashing of the Scheme dated June 18, 1998 formulated by the State of Haryana. They also seek a mandamus to issue them permits in accordance with Chapter-V of 1988 Act. The petitioner in CWP No.9853 of 2006 seeks the quashing of the Scheme dated November 3, 1993 also formulated by the State of Haryana, as also a direction for issuance of permit under Section 80 of the 1988 Act.

(vii) LPA Nos.1428, 1429 & 1432 of 2012 are at the instance of the State of Haryana against the order dated June 28, 2010 passed by the learned Single Judge holding that there is no valid Scheme operating in the State of Haryana hence the extension or additional permits could not be denied to the respondent-private operators.

(3) We clarify at the outset and it has been so submitted by counsel for the parties also that instead of dwelling upon the facts of each and every case or the prayers made therein, we may address the moot point fencing around the legality of Scheme(s) purportedly framed by the Governments of Punjab or Haryana in exercise of powers under Section 99 (Chapter-VI) of the Motor Vehicles Act, 1988. The consequential or incidental claims of each petitioner can thereafter be effectively adjudicated by the State or Regional Transport Authorities or the Appellate Tribunal notified under the Act.

Brief Legislative History :

(4) The Motor Vehicles Act, 1939 replaced the Indian Motor Vehicles Act, 1914 and also repealed wholly or in part several enactments of State Legislatures mentioned in its Twelfth Schedule. Section 43 of this Act empowered the State Government to have complete control on road transport. The grant of Stage Carriage Permit was somewhat a discretion of the Regional Transport Authority guided by the factors enumerated in Section 47 and subject to the conditions mentioned in Section 48. Similar was the procedure for the grant of Contract Carriage Permits. Chapter IV-A was a post- Constitution addition in tune with Article 19(6)(ii) of the Constitution containing "Special Provisions relating to State Transport Undertakings", Section 68-B thereof gave overriding effect to Chapter IV-A over Chapter-IV and other laws.

(5) The Motor Vehicles Act, 1939 was repealed by the Motor Vehicles Act, 1988 (in short, 'the 1988 Act') which came into force on 01st July, 1989. The Statement of Objects and Reasons of the 1988 Act unveil that it was legislated keeping in view the modern day changes in road transport technology, pattern of passengers, freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicles management. The Act intended to provide *inter alia*

"liberalized schemes for grant of state carriage permits on non-nationalised routes, All-India Route Permits and also National Permits for goods carriages".

(6) Some of the provisions contained in Chapters I, V & VI of the 1988 Act are the bone of contention in these cases and it would be beneficial to briefly embark upon them at this stage.

(7) Section 2 of the 1988 Act defines various phrases and its clauses (1), (31), (35), (38), (40) and (42), read as follow:-

*"2. **Definitions.** – In this Act, unless the context otherwise requires, -*

*(1) **"area"**, in relation to any provision of this Act, means such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette;*

*(31) **"permit"** means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of motor vehicle as a transport vehicle ;*

*(35) **"public service vehicle"** means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage ;*

*(38) **"route"** means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another ;*

*(40) **"stage carriage"** means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey ;*

*(42) **"State transport undertaking"** means any undertaking providing road transport service, where such undertaking is carried on by –*

(i) the Central Government or a State Government ;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 ;

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;

(iv) Zilla Parishad or any other similar local authority.

Explanation. – For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward"

*(47) "**transport vehicle**" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle ;*

(8) Chapter-V comprising Sections 66 to 96 pertains to "Control of Transport Vehicles". Section 66(1) prevents the owner of a motor vehicle from using it as a transport vehicle in any public place save in accordance with the conditions of a permit granted or countersigned by the prescribed authority, while Section 67 empowers the State Government to control road transport including power to issue directions for fixation of fares and freights for Stage Carriages, Contract Carriages and Good Carriages.

(9) Section 68(1) of the 1988 Act authorises the State Government to constitute State Transport Authority and Regional Transport Authorities and their powers and functions. Sub-Section (2) prescribes eligibility and composition of a multi-member State or Regional Transport Authority. Its second *proviso*, however, enables the State Government wherever it is necessary or expedient so to do, to constitute the State or Regional Transport Authority consisting of only one Member. Sub-Section (3) enlists the powers and functions exercisable by the State or Regional Transport Authority.

(10) A Regional Transport Authority is obligated to have regard to the objects of the Act while considering an application for Stage Carriage Permit and can refuse the same only for the reasons mentioned in Section 71(2) read with Section 72 save that no such permit can be granted in respect of any route or area not specified in the application moved under Section 70 of the Act. A similar procedure is prescribed for the grant of 'Contract Carriage Permit' or the 'Goods Carriage Permit' under the 1988 Act.

(11). Section 80 prescribes the "Procedure in Applying for and Granting Permits" and its scope and applicability is one of the core issue involved in these cases. Its sub-Section (1) empowers a desirous person to apply for a permit of any kind 'at any time'. Sub-section (2) commands the Regional or State Transport Authority not to 'ordinarily refuse' to grant an application for permit of any kind made at any time except for the reason mentioned in its first *proviso*. An application to vary conditions of a permit can also be moved at any time. The replacement of a permit is permissible under sub-Section (4) subject to the conditions contained in its proviso while sub-section (5) saves its validity period even without renewal.

(12) Section 81 makes duration of a permit other than a 'temporary' or 'special' effective for a period of five years from the date of issuance or its renewal. A permit once granted and/or renewed can be suspended or cancelled only for the reasons specified in Section 86(1) of the 1988 Act.

(13) Section 88 deals with validation of permits for use outside the region only if it is countersigned by the Regional Transport Authority of that other region. Similarly, a permit granted in one State shall not be valid in any other State unless countersigned by the prescribed authority of that other State except wherever it is expressly so provided. The countersignatures of permits are regulated by sub-Section (4) whereas sub-Section (5) deals with an agreement arrived at between the States to fix the number of permits proposed to be granted or countersigned in respect of each route or area and every such agreement is to be published in accordance with its sub-Section (6).

(14) A person aggrieved at non-grant of permit or of any condition attached to his permit, revocation or suspension of the permit, refusal to transfer the permit, refusal to countersign a permit, refusal of renewal of a permit etc. is entitled to appeal to the State Transport Appellate Tribunal consisting of a Judicial Officer not below the rank of a District Judge as contemplated by Section 89 of the 1988 Act. The orders which are not appealable can also be put to judicial scrutiny of the Appellate Tribunal by way of a revision petition under Section 90 of the Act.

(15) It may thus be seen that there is a clear departure in the legislative policy compared with that of the provisions of Motor Vehicles Act, 1939 as the procedure for applying or issuing permits has been completely liberalised under Chapter-V of the 1988 Act leaving the State Government with just a few regulatory powers.

(16) We now briefly analyse the legislative scheme contained in Chapter-VI of the 1988 Act containing "SPECIAL PROVISIONS RELATING TO STATE TRANSPORT UNDERTAKINGS".

(17) Section 97 defines "road transport service" to mean a service of motor vehicles carrying passengers or goods or both by road for hire or reward unless the context otherwise requires.

(18) Section 98 is yet another epicenter of controversy by virtue of its *non obstante* clause giving overriding effect to Chapter-VI on Chapter-V and other laws and it reads as follows:-

> ***"98. Chapter to override Chapter-V and other laws.-*** *The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter-V or in any other law for the time being in force or in any instrument having effect by virtue of any such law."*

(19) Section 99, whose interpretation also falls in the central pole of debate, empowers the State Government to formulate a Scheme to provide that the road transport services in general or any of its particular class 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, if it is so necessary in public interest. Since the construction of certain words and phrases contained in this provision is also in dispute, we reproduce sub-Section (1) of Section 99, hereunder:-

> ***"99. Preparation and publication of proposal regarding road transport service of a State transport undertaking. –***
>
> *(1) Where any State Government 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 Government may formulate a 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 respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit."*

(20) No sooner did a proposed Scheme is published under sub-Section (1), than no permit can be granted to any person except a temporary permit valid for a period of one year from the date of its issue. The proposed Scheme is required to be published to invite objections in the manner as prescribed by Section 100(1) which would be considered by the State Government as per sub-Section (2), followed by publication of the final Scheme in terms of sub-Section (3) failing which the proposed Scheme will lapse under sub-Section (4).

(21) The final Scheme notified under Section 100(3) can be modified or cancelled by the State Government at any time in public interest after following the procedure prescribed under Section 102 of the 1988 Act.

(22) A State Transport Undertaking can thereafter apply for a Stage/Good/Contract Carriage Permit(s) in respect of a notified area or notified route under the approved Scheme, notwithstanding anything to the contrary contained in Chapter-V. The other effect of an approved Scheme would be that under sub-Section (2) of Section 103 the State or Regional Transport Authority shall refuse to entertain any application for the grant or renewal of any other permit or reject any such application; cancel any existing permit; and modify the terms of any existing permit so as to render it ineffective beyond a specified date or reduce the number of vehicles authorised to be used under a permit or curtail the area or route covered by the permit so far as it relates to the notified area or notified route and an order passed by the State or Regional Transport Authority to the aforesaid effect is not appealable under Section 89 of the 1988 Act.

(23) Section 104 prohibits the State or a Regional Transport Authority from granting any permit except in accordance with provisions of the approved Scheme though a temporary permit can be granted if the State Transport Undertaking has not applied for permit in respect of a notified area or notified route.

(24) If an existing permit is cancelled or its terms are modified under Section 103(2), the State Transport Undertaking is required to pay compensation to the holder of the permit, the amount of which is to be determined in accordance with sub-Sections (4) & (5) of Section 105 of the Act. Section 107(1) gives power to the State Government to make rules for the purpose of carrying into effect the provisions of Chapter-VI and such rules may without prejudice to the generality, provide any of the matters mentioned in sub-Section (2) of Section 107.

(25) The other provision(s) of paramount importance for resolving the embattled issues are Sections 217 & 217-A contained in Chapter-XIV of the 1988 Act. While Section 217(1) repeals the Motor Vehicles Act, 1939, its sub-Section (2) saves various actions taken under the repealed Act including some of the notifications, rule, regulation, order or notice issued as well as the following:-

> *"(b) any certificate of fitness or registration or licence or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed;*

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) The permits issued under sub-section (1-A) of section 68-F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding provisions, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter-VI of this Act is published."

Brief history of Scheme(s) formulated by Government of Punjab after enactment of 1988 Act:

1990 Scheme

(26) The Government of Punjab in purported exercise of its powers under Section 99 of Chapter-VI formulated a proposal that the road transport services in certain areas and routes should be run and operated by the STUs to the complete or partial exclusion of other persons and issued a notification on August 11, 1989 inviting objections within a period of 30 days from the date of publication of the proposal. The approved Scheme was thereafter notified on August 9, 1990.

(27) Clause (1) of 1990 Scheme defined certain phrases besides dividing the routes into three categories, namely, (i) Monopoly Routes [Annexure-A]; (ii) National Highways [Annexure-B]; and (iii) State Highways [Annexure-C]. Clause (2) declared that "all inter-State routes shall be operated by the State Transport Undertaking as hither-to-fore and present operation of private operators shall remain unaffected till the validity of their route permits or for three years from the date of final publication of the scheme, whichever is later"... subject to review after three years. Private operators of the routes which became inter-State routes as a result of re-organisation of the States were not affected. Clause (3) of the Scheme laid down that all future operations on inter-State routes in accordance with the reciprocal agreements or understanding between the concerned States/UT shall exclusively be undertaken by STU. Clause (4) prescribed that "all operations existing or future on monopoly routes shall exclusively be undertaken by the STUs.

(28) Clause-5 of the 1990 Scheme provided that future operations of routes on the national highways falling within the State were to be undertaken by the STUs and private operators in the ratio of 70:30, while Clause (6) was to the effect that future operations of the routes on State highways other than those specified in Clauses (2),(3) & (4), were to be undertaken by the STUs and private operators in the ration of 50:50. Similarly, as per Clause (7) all future operations of routes other than those specified in Clauses (2),(3) & (4) on district and other roads were to be undertaken by STUs and private operators in the ratio of 50:50. Clause (8) of the Scheme contained a *non obstante* clause to the following effect:-

> *"(8) Notwithstanding anything contained in this Scheme –*
>
> *(i) the services of persons of any State other than the State of Punjab or any Union Territory, operating on any route, by virtue of any reciprocal agreement or understanding shall not be affected; and*
>
> *(ii) the operation of mini bus services, shall be undertaken in accordance with the Scheme notified – vide Government of Punjab, Department of Transport Notification No.SO37/CA.4/39/S.43-A/80 dated the 18th June, 1980."*

Modifications on October 21, 1997

(29) The Punjab Government invoked its powers under Section 102 of the 1988 Act to carry out 'modification' in the existing Scheme dated August 9, 1990 and published a proposal in this regard vide Notification dated February 1, 1995 inviting objections, followed by publication of the modified Scheme on October 21, 1997, the features whereof too deserve attention and are briefly discussed herein.

(30) The modified Scheme inserted sub-clause (cc) in clause (1) to define "Mini Bus" to mean a stage carriage the body of which shall be fabricated on a Chassis, the wheelbase of which does not exceed 137 inches and which does not carry more than thirty passengers besides the driver and the conductor, or as may be specified by the State Transport Authority, from time to time. Clause (2) of the original Scheme was completely substituted by the following new Clause:-

> *"(2) All Inter State routes shall be operated by the State Transport Undertakings and operations of private operators whose permits were valid for a period of three years from the date of the publication of the Scheme, shall remain unaffected."*

Three *provisos* were also added to Clause (2) to keep those routes unaffected which were being operated by private operators and became inter-State routes due to re-organisation; (ii) the operation of private operators of any State other than State of Punjab/UT by virtue of reciprocal agreement or counter-signed permits were also saved; and (iii) a provision to grant permit to private operators to operate airconditioned buses from district headquarter and important towns of Punjab State to UT Chandigarh.

(31) Similarly, Clause (4) of the Scheme was replaced and a new provision to the effect that all future operations on monopoly routes shall be operated by the STUs *"provided that a private operator may be allowed to operate on a portion of twenty per cent of the monopoly route or upto the distance of fifteen kilometers of the said route whichever is less, where it is necessary or is in public interest to do so: provided further that the permits granted by the Regional Transport Authority before coming into force of the Scheme to the private operators for operating on monopoly routes wholly or on portion thereof or on the routes in which the monopoly routes fall, shall remain unaffected"*, was substituted.

(32) Clause (5) was modified to the extent that the ratio of 70:30 between STUs and private operators was revised to 75:25. In Clauses (6) & (7), the words "other than the routes specified in clauses (2), (3) & (4)" were omitted and the ratio of 50:50 was replaced by that of 40:60 including operations of mini buses and inter-State operations.

(33) After Clause (7), two new Clauses (7-A) & (7-B) were inserted while Clause (8) of the original Scheme was omitted. Clause (7-A) authorized grant of permits to mini buses for operation on routes, linking one village with another 'without their being any city or a town or municipality' in between the aforesaid two villages, or a route linking a village with the block headquarter or a municipality or town or mandi or city, or for service within a town, municipality or city subject to the condition that (a) the total length of each such route does not exceed 25 kilometers and the total operation per bus, does not exceed 250 kilometers per day; (b) not more than half of the total route-length runs across a National Highway or State

Highway; (c) At least one of the terminal of the route shall be a village and shall not include more than one municipality except on a local route falling within the municipal limits of a town, municipality or city wherein both the starting and the terminating points may be the same or may fall within the same town, municipality or city, as the case may be; and (d) It shall be ensured that the interests of the State Transport Undertakings are not affected adversely on such routes.

(34) Clause (2) of the Scheme, pertaining to the grant of permits on inter-State routes, was assailed in ***Sirhind Bus Service Registered, Sirhind*** versus ***State Transport Commissioner, Punjab & Anr. (1)*** and a Division Bench of this Court, having regard to the admitted fact that no approval was accorded by the Central Government to the Scheme so far as it pertained to interCWP State routes, held that it was beyond the power of the State Transport Commissioner to grant permits to STUs, contrary to the *proviso* to Section 100(3) of the 1988 Act. Clause (2) of the Scheme was thus declared illegal by necessary implication.

(35) The validity of third *proviso* to Clause (2) of the Scheme inserted vide notification dated October 21, 1997 was put to challenge before this Court in ***Maharaja Travels Registered, Amritsar vs. State of Punjab & Anr. (CWP No.3977 of 2003 decided on 21.10.2003),*** questioning the State Government's jurisdiction or power to limit the number of permits by framing a Scheme under Section 99 of the 1988 Act when the STUs were not holding any Stage Carriage Permit in respect of air-conditioned buses and the same were to be issued under Section 80(2) contained in Chapter-V of the 1988 Act. This Court ruled that "the respondents did not have the jurisdiction to restrict the number of permits which could be granted for operating air-conditioned bus services". The third *proviso* to Clause (2) of the Scheme inserted vide modified Scheme dated October 21, 1997 was consequently struck down being *ultra vires* to Section 99 read with Section 100 of the Act.

(36) Clause (7-A) added in the modified Scheme vide notification dated October 21, 1997, was also held illegal, it being directly in teeth of

(1) 2002(3) PLR 816

the legislative policy of liberalization of permits and *ultra vires* the powers conferred upon State Government under Section 99 of the 1988 Act by the Hon'ble Supreme Court in ***Jagdip Singh*** versus ***Jagir Chand & Anr. (2),*** para 14 whereof being relevant is extracted below :-

> *"For the purpose of these appeals, clauses (2) and (4) are not at all relevant. Clause (2) provides for all inter-state routes and clause (4) provides for future operators on monopoly routes which are to be operated by the State Undertakings. Relevant clause is clause (7-A) and it nowhere reveals that it is in conformity with Section 99 of the Act. Under Section 99 of the Act if the State Transport Undertaking is to operate on a particular route, then only the scheme could be made applicable. The aforesaid Scheme does not provide that the routes mentioned in Clause (7-A) are to be covered and operated completely or partially by the State Transport Undertaking. In such cases, Section 80(2) would be applicable as under Section 99, the State Government is not empowered to provide that only few private operators would operate on a particular route/routes and Regional Transport Authority or other prescribed authority cannot ordinarily refuse to grant an application for permit of any kind made at any time under the Act."*

(37) The above-cited three decisions striking down one or the other clause/part of the Scheme have been delivered after the institution of some of these cases, challenging the original as well as the modified Scheme dated October 21, 1997.

Further Modification of the Scheme on December 20, 2011

(38) State of Punjab has further modified the Scheme vide Notification dated December 20, 2011, followed by a corrigendum dated April 20, 2012. The Notification dated December 20, 2011 has substituted Clauses (2), (3), (5), (6) & (7) of the Scheme besides inserting Clauses (8), (9) & (10) after Clause (7-B). The corrigendum has restored Clause (4) and deleted some of the provisions added on February 20, 2011.

(2) (2001) 8 SCC 437

(39) The following are the effects of modification in the Scheme carried out vide notification dated December 20, 2011 and the corrigendum dated April 20, 2012:-

(i) clause (2) of the modified Scheme keeps intact the permits granted in favour of private operators on inter-State routes and they are to remain unaffected "till the date of their expiry";

(ii) private operators of the routes which have become inter-State routes as a result of re-organisation of the State in the year 1966 or those who are operating on any route by virtue of reciprocal agreement or permits granted by other States/UT, are also unaffected;

(iii) all future Stage Carriage Permits for operation on inter-State routes as per reciprocal agreements or mutual understanding shall exclusively be granted in favour of STUs but a private operator for operation of AC Integral Coach or Super Integral Coach from a District Headquarter or an important town can still be granted permit;

(iv) private operators of AC buses or AC integral coaches etc. can be allowed to operate on the neighbouring inter-State routes subject to reciprocal agreement;

(v) all Stage Carriage Permits on the National Highways within the State of Punjab shall be granted to the STUs and the private operators in the ratio of 75:25;

(vi) on the State Highways the STUs and the private operators shall operate in the ratio of 40:60;

(vii) on the district and other roads also, the STUs and the private operators shall be in the ratio of 40:60;

(viii) the existing operations of the Stage Carriage Permits of the STUs and the private operators shall remain unaffected;

(ix) all existing permits may be renewed after their expiry.

(40) The petitioners before us are either small scale existing operators who are craving for more permits or those who tried but have failed to enter into the transport business. They cannot be thus heard complaining that no Scheme can be framed by State Government creating monopolistic nationalization in favour of STUs to the exclusion of private operators, as they are fully aware of as to how soundly Section 99 empowers the State Government. Their relentless effort however appears to be for the removal of veil of legitimacy from the Scheme and to unearth the alleged concerted efforts for the protection, promotion and monopolisation of the transport business in favour of a few chosen private operators in conflict with the legislative object behind Section 99 of the Act.

(41) In their endeavour to demonstrate that the impugned Scheme or its subsequent modifications are hit by Articles 14, 19(1)(g) and 19(6) of the Constitution read with the provisions contained in Chapters V & VI of the 1988 Act as the Scheme is designed to create monopoly in favour of the existing private operators, leaving no equal play level field for a new entrant, it was vehemently contended on behalf of the petitioners that –

(i) Every provision of the 1988 Act should be interpreted in a manner consistent with its legislative policy to liberalise, simplify and introduce transparent procedure for granting permits so as to weed out corruption in the said process. The mandate contained in Section 71 that a Regional Transport Authority **shall**, while considering an application for a Stage Carriage Permit, 'have regards to the objects of this Act', can be given effect only if the STUs and private operators co-exist to provide competitive stage carriage services in the best interest of the public;

(ii) A Scheme under Section 99 can only be formulated for 'nationalisation' of the 'routes' or 'area' and to take over the pre-existing private operators and to substitute them by the STUs. However, neither any route is nationalised in the State of Punjab nor the Scheme envisages taking over of the privately-owned pre-existing services. There can be no 'Nationalisation' without payment of compensation to the private operators in accordance with Section 105 of the Act but no such exercise has been undertaken;

(iii) 'Nationalization' of an 'area' or a 'route' under a Scheme can neither be discriminatory nor partial. A 'route' is a line of travel between two destinations and it cannot be said that the route is nationalised at point-A but not at point-B. There is no 'take over' of the 'National Highways' within the State or of 'Monopoly Routes' and thus these routes have been illegally notified under the Scheme;

(iv) The Government of Punjab while formulating the Scheme has misconstrued the word "overrides" which has a restrictive meaning, to be understood as a 'substitute' or 'replacement' of the existing road transport service by a STU. The expressions "complete", "partial" or "otherwise" contained in Section 99 have been misconstrued ignoring the fact that the word "otherwise" must be read in aid to taking forward the object for which the Statute and in particular its Section 99 exists. The word "otherwise" in fact is a bridge between the two;

(v) The Scheme under challenge protects and provides perpetual renewal of old permits though when a Scheme is promulgated under Chapter-VI, it shall have the effect of extinguishing all rights of the existing permit-holders;

(vi) The Scheme under challenge is loaded with an alien and *ad hoc* procedure to issue permits on pick and choose basis contrary to the scheme of principal legislation. The Scheme deliberately intrudes into the field occupied by Chapter-V and **grants** Stage Carriage Permits;

(vii) Where the Scheme is to the partial exclusion of private operators, such Scheme must provide that the permits earmarked for private operators are granted strictly in accordance with Chapter-V and those permits should be free from the restriction of limits and be granted in accordance with Section 80 of the 1988 Act;

(viii) The impugned Scheme has been drafted as a ruse to protect the selective private operators, contrary to the settled principles. Nearly all the routes in the State of Punjab have been reserved for existing private operators who have successfully eliminated other intending operators and are the sole beneficiaries. The new entrants are deprived of the right to compete with the existing operators in a

totally discriminatory manner and the Scheme also violates Article 19(1)(g) as it does not qualify the test of reasonable restriction within the meaning of Article 19(6) of the Constitution;

(ix) The power of 'modification' under Section 102 has been misused persistently by the State Government by transmogrifying it to its advantage. The power of modification has been further misused vide Notification dated December 20, 2011 to overreach the Courts and reintroduce those clauses of 1990 or 1997 Scheme which were struck down in one decisions or the other;

(x) Even if the word 'otherwise' appearing in Section 99 gives the State a *carte blanche* or further places that provision under the protective umbrella of Article 19(6)(ii) of the Constitution, yet the 'Partial exclusion' can be made indiscriminately as to route, area, kind of service but not amongst similarly placed persons with regard to the same route or area;

(xi) The impugned Scheme is an exercise in colourable legislation aimed at the reincarnation of Section 47(3) of the 1939 repealed Act and a device to dissolve the water tight barrier between Chapters V & VI of the 1988 Act wherein permits are **granted** to all applicants including the STUs under Chapter-V, but **issued** only to the STUs pursuant to an approved Scheme under Chapter-VI;

(xii) The Scheme suffers from legal *mala fides* as it perpetuates monopoly of erstwhile stakeholders whose permits under the 1939 Act have been rekindled even though they did not survive on account of its repeal in terms of Section 217 of the 1988 Act. Thereafter, such permits have been perpetuated in eternity by modification of the original Scheme. In other words, dead permits have been revived and then made eternal;

(xiii) The word 'otherwise' appearing in Section 99, is akin to Section 151 CPC or to Section 482 CrPC and was borrowed from Article 19(6)(ii) of the Constitution for the removal of difficulties arising out of imponderable contingencies and must be resorted to only for furthering objects and purposes of the Statute and definitely not to negate the principal Act or its purposes.

(xiv) There was no legal necessity to formulate a Scheme for coexistence of the private operators and STUs which is already provided for in Chapter-V. Section 99 ought to be construed narrowly as it abridges Article 19(1)(g) though protected by Article 19(6)(ii) of the Constitution. The Scheme allegedly provides no new service except effacing the liberalisation enshrined in Section 80 or reflected in the Statement of Objects and Reasons of the 1988 Act;

(xv) There arises need for framing a Scheme only for ouster of existing private operators, taking over their permits, nationalizing routes, and substituting their cancelled permits with permits issued to the STUs. In the absence of such take over i.e. nationalisation which would entitle the affected operator to seek compensation under Chapter-VI, there is no *raison d'etre* for a Scheme;

(xvi) There cannot be a Scheme to cater to the future needs as it has to be implemented at once and its object, within the meaning of Section 99, must be to provide better road transport services to the public *in praesentia*;

(xvii) A Scheme must give particulars and cannot be vague and if it is not precise or does not specify the routes to be taken over or nationalised along with the nature of services to be rendered or the number of buses to be plied as well as the number of trips to be undertaken by each vehicle on each route, such Scheme would deprive the affected persons of their right to lodge objections. The proposed Scheme must also open up with the comparative advantages to the existing operations which is one of the material criteria for its formulation;

(xviii) The power of State Government to formulate a Scheme is subject to the control and restrictions embedded in Section 99. The said power cannot be exercised unless the preconditions like object of providing an (i) efficient, (ii) adequate, (iii) economical and (iv) properly co-ordinated road transport service, are satisfied. The impugned Scheme though recites the phraseology of Section 99 like a ritual but on facts it does not satisfy the above-mentioned tests which are *sine qua non* for the formulation of a Scheme;

(xix) No proper opportunity of being heard was afforded before finalisation of the Scheme as according to the petitioners the objections to the Scheme were heard by an Officer in the rank of Joint Secretary but the same were disposed of by a different officer, namely, the Secretary, Department of Transport;

(xx) The draft proposal of the modified scheme was published on 01.02.1995 but the approved Scheme was notified on October 21, 1997 therefore, the same lapsed on expiry of mandatory period of one year prescribed under Section 100(4);

(xxi) Rule 128(2) of the Punjab Motor Vehicles Rules, 1989 which provides that an application by the private operator for grant of Stage Carriage Permit shall be made within such time as may be indicated in the notice inviting applications, is liable to be quashed as it *ultra vires* Section 80(1) which provides that an application for grant of permit can be made any time;

maximum period of five years as per its Section 58 and those permits were saved by Section 217(2)(b) of the 1988 Act till the expiry of their validity period. Such permits therefore could not be renewed under Section 217-A which came into force w.e.f. 11.08.2000 only for the reason that they were no longer valid or operative permits;

(xxiii) The scheme as modified in the year 2011 not only violates Articles 19(1)(g), 19(6)(ii) and 257 of the Constitution, its various clauses are an attempt to re-introduce these provisions of 1990/ 1997 Scheme which were struck down by this Court or by the Hon'ble Supreme Court.

(42) Countering the petitioners' attack, Mr. Amol Rattan Singh, Addl.AG Punjab objected to the very maintainability of these petitions and urged them to be rejected they being not maintainable or having become infructuous as according to him:-

(i) the Scheme dated August 9, 1990, modified on October 21, 1997, has since been further modified and substituted on December 20, 2011. As the old Scheme is no longer operative, the recently modified scheme has not been challenged either by amending the writ petitions or through a fresh process;

(ii) CWP No.2077 of 1999 has been purportedly filed in public interest whereas the averments made in its para 2 surely establish that the petitioner has got vested interest, hence it lacks *pro bono publico*;

(iii) There is an inordinate delay ranging between 8 to 19 years in assailing the 1990 Scheme as the first writ petition was filed in the year 1998;

(iv) The petitioners neither raised objections against the proposed Scheme notified on August 11, 1989 nor did they avail such an opportunity under Section 102 of the 1988 Act before modification of the Scheme vide notification dated October 21, 1997, hence they cannot turn around and lay challenge to the final Scheme, at this stage;

(v) The final outcome of these writ petitions may adversely affect the existing operators who have been impleaded as party respondents in the years 2011-2012 after a long delay;

(vi) The petitioners are mainly aggrieved at the refusal of permits and/or grant of permits to other persons. Such like grievances can be effectively ventilated in an appeal under Section 89 of the Act before the State Transport Appellate Tribunal. The petitioners can thus be relegated to the said alternative efficacious remedy.

(43) On merits, learned Addl. AG maintained that the petitioners' case centres around Chapter-V only and over-looks Chapter-VI which contains "Special Provisions Relating To State Transport Undertakings". He laid emphasis on Section 98 to urge that provisions of Chapter-VI including the rules or orders made there-under have an overriding effect to the extent of inconsistency not only on Chapter-V but "any other law" also. He argued that Chapter-VI, in particular its Sections 98 & 99, are also an inseparable part of the legislative policy and so is the decision of the Legislature to insert *non obstante* clause in Section 98 to establish its supremacy over the provisions of Chapter-VI or any other law. The State counsel urged that the Court would strike a balance through harmonious interpretation between the scheme of liberalization in Chapter-V and the restrictions that may be imposed on such liberalization, if a Scheme is notified by State Government

under Section 99 of Chapter- VI, moreso when such Scheme does not violate Articles 14 or 19(1)(g) and is expressly protected under Article 19(6)(ii) of the Constitution.

(44) The phrase "complete or partial" was referred to from Section 99 to refute the petitioners' plea that co-existence of the STUs and the private operators is permissible under Chapter-V only and not in a Scheme under Chapter-VI. Learned Addl. AG maintained that the petitioners' plea negates the very object of a Scheme which may be to the partial exclusion of private operators as per the ratio mentioned therein.

(45) Denying the allegations that the impugned Scheme is camouflaged in such a manner that it discriminately saves operation of the existing operators, it was urged that a Scheme notified under Section 99 of the Act is a 'law' in itself and the exceptions or conditions provided therein shall have to be followed. He strongly refuted the insinuation of discrimination against prospective operators.

(46) It was also suggested that in essence a Scheme is formulated only in public interest, namely, convenience of the travelling public, hence the State and its STUs are under a bounden duty to keep on augmenting bus services to the new destinations of travelling public, like schools, colleges, universities, hospitals etc. and it being a continuous process, the Scheme cannot be modified for every new route or permit, therefore the provision in the Scheme to cater to the future needs is well justified.

(47) It was denied that Rule 128 of Punjab Motor Vehicles Rules, 1989 has been incorporated to favour existing operators even after the deletion of the identical Rule 64 on 26.11.1997. The State counsel explained that Rule 128 was amended and a new provision inserted on 15.01.2001 for the reason that Rule 64 was wrongly promulgated under Section 71(3) and 96(2) of Chapter-V even though the Stage Carriage Permits are to be freely issued/granted under that Chapter. On the other hand, Rule 128 has been promulgated under Sections 99 and 107, both of which are part of Chapter-VI and since there is restriction on issuance of new permits under a Scheme that objections need to be invited to comply with the principles of *audi alteram partem*. He submitted that Sections 71, 96 & 111 have also been mentioned unwittingly while issuing the notification dated

15.01.2001 whereby Rule 128 has been substituted and that such like unintentional error would not render the Rule invalidated when power to frame that Rule is traceable under the Act.

(48) It was vehemently urged that the framing of Scheme by State Government under Section 99 is a policy decision and allowing existing operators to continue operating in any sector or route is also an integral part of such a policy decision. The existing operators have got vast experience in catering to the needs of travelling public and have made huge investments besides giving employment to large number of employees hence the policy decision taken to protect the existing operators calls for no interference by this Court in exercise of its power of judicial review. The prerogative of the State Government to formulate Policies or Schemes cannot be denied or jeopardized to frustrate the doctrine of separation of powers.

(49) It was also claimed that the State Government decided to regulate the transport sector in a manner that the STUs and private operators complement each other for the reason that the State did not have enough fleet of buses and the private operators could not be forced to operate on unviable routes. Lastly, it was explained that modifications in the 1990 Scheme, whether in 1997 or 2011, have been carried out following the due procedure laid down under Section 102 for which records can be produced.

(50) In all fairness to them, it may be mentioned here that learned counsel for the parties relied upon a catena of decisions in support of their respective submissions and only a few of them which have a direct bearing on the issues involved, have been discussed in the later part of this order.

(51) Mr. Baldev Kapoor, learned counsel for one of the STUs (PRTC) while reiterating the submissions made by learned Addl. AG, relied upon a Full Bench decision of Allahabad High Court in ***UP State Road Transport Corporation*** versus ***The State Transport Appellate (Tribunal), UP Lucknow & Ors. (3),*** to urge that there could be two kinds of schemes, one providing total monopoly in favour of the STUs to the complete exclusion of private operators while the other to the partial exclusion of private operators who may then obtain permits in accordance

(3) AIR 1977 Allahabad 1

with the terms and conditions laid down in the Scheme. ***Sindhi Sahiti Multipurpose Transport Cooperative Society Ltd.*** versus ***State of Madhya Pradesh & Ors. (4),*** was cited to contend that a Scheme can be objected to only on the grounds mentioned in Section 99 and nationalization of any route completely or partially or curtailment of routes are a matter of policy. ***R. Raghuram*** versus ***P.Jayarama Naidu & Ors. (5),*** was referred to explain that a Scheme may exempt an existing operator to the extent that he can continue to operate his services with the existing number of trips on the date on which the Scheme is published though variation of his permit so as to increase the number of trips on the overlapping portion of the notified route is impermissible. In ***Ramesh Chand & Ors.*** versus ***State of UP & Ors. (6),*** Supreme Court declined to entertain a new plea taken after a lapse of 15 years that the Scheme was invalid for not specifying maximum or minimum number of buses, vehicles and trips as no such objection was raised before the Scheme was sanctioned. In ***APSRTC*** versus ***M.Gurivi Reddy & Ors. (7),*** it was held that a Scheme could not be set aside only on the ground of inordinate delay in the approval of such Scheme. In ***HC Narayanappa & Ors.*** versus ***State of Mysore & Ors. (8),*** challenge to a Scheme formulated under the old Act being violative of Articles 14 & 19(1)(g) of the Constitution was turned down observing that the authority of the Parliament to enact laws granting monopolies to the State Government to conduct the business of road transport is not open to serious challenge. In ***Sarjoo Prasad Singh*** versus ***State of Bihar & Ors. (9),*** it was observed that the Scheme may or may not allow private operators to ply on the nationalized routes and that no finding of fact is necessary on each and every separate objection raised on modification of the Scheme. In ***Pandiyan Roadways Corporation Ltd.*** versus ***MA Egappan (10),*** it was held that where a draft scheme excluded completely all other persons from operating their stage carriage services under permits covering the entire route except the existing operators on different sectors of the notified route,

(4) (1977) 1 SCC 403
(5) (1990) Suppl.SCC 361
(6) (1979) 4 SCC 776
(7) (1992) 4 SCC 72
(8) AIR 1960 SC 1073
(9) (1977) 1 SCC 34
(10) (1987) 2 SCC 47

an operator who was not saved would not be entitled to operate his stage carriage on the notified route or a portion thereof. The decisions in ***Guffic Chem Pvt. Ltd.*** versus ***Commissioner of Income Tax, Belgaum & Anr. (11),*** was relied upon to contend that Section 217-A being a clarificatory legislation is retrospective in nature. A Division Bench decision dated May 25, 2001 of this Court in RA No.449 of 2000 in CWP No.6374 of 1999 (Sham Lal vs. The ***State Transport Commissioner, Pb. & Ors.)*** was also cited on this very issue.

What is the Legislative Policy of the 1988 Act?

(52) The resoluted determination of Parliament to liberalise transport services through Stage, Contract or Goods Carriage Permits prompted it to legislate the 1988 Act. Chapter-V of the Act has successfully invaded the monopolistic fortresses of the existing operators opening doors for the new initiates for a healthy competition to bring efficiency in the trade.

(53) The liberalization of permits under the 1988 Act was taken notice of and complimented by the Supreme Court in ***Mithilesh Garg & Ors.*** versus ***Union of India & Ors. (12),*** while rejecting challenge to the validity of Sections 71, 72 & 80 (Chapter-V) of the 1988 Act laid by the existing private operators. The scheme behind the 1988 Act was viewed as a tool to eliminate *"corruption and favouritism in the process of granting permits" and that "the transport system in a State is meant for the benefit and convenience of the public" and "the policy to grant permits liberally under the Act is directed towards the said goal"*. The Supreme Court also commented upon the system prevailing under the repealed Act observing that *"restricted licensing under the old Act led to the concentration of business in the hands of a few persons thereby giving rise to a kind of monopoly, adversely effecting the public interest"*.

(54) Chapter-VI, however, is also the creation of Legislature along with its supremacy over Chapter-V and any other law, by virtue of the *non obstante* clause contained in Section 98 of the 1988 Act. It is therefore inarguable that when a Scheme formulated under Section 99 comes into force, it can to the extent of inconsistency, defunct Chapter-V, for such a Scheme is also 'law' and carries that force. When a Scheme is in operation,

(11) (2011) 4 SCC 254
(12) (1992) 1 SCC 168

Sections 80 & 81 are in suspended animation and grant of permits or their renewal is also taken over and controlled by such Scheme under Section 104 of the 1988 Act.

(55) No matter that its commitment for liberal permits manifested in Chapter-V, the Legislature thought it appropriate to give overriding effect to Chapter-VI, through Section 98, on Chapter-V and any other Law, declaring that provisions of Chapter-VI and the Rules or orders made thereunder shall have effect even if anything inconsistent therewith is contained in Chapter-V or any other law for the time being in force or in any instrument having effect by virtue of such law. It is thus explicit in abundance that whenever a State Government forms an opinion in public interest that the road transport services in relation to any area or route or portion thereof are required to be operated by a State Transport Undertaking (STU), to the partial or complete exclusion of other operators, it may formulate a Scheme subject to the conditions prescribed in Section 99 and such a Scheme, by virtue of Section 98, shall *per force* put the policy of liberal permits envisaged by Chapter-V in abeyance.

(56) Section 99 is indubitably protected by Article 19(6)(ii) of the Constitution and so would be a Scheme formulated thereunder provided that such Scheme testifies the pre-requisites as mandated by Section 99 only, namely, (i) formation of opinion by State Government for the need of efficient, adequate, economical and properly coordinated road transport service; (ii) such need is necessary in the public interest; (iii) the road transport service pertains to any area or route or portion thereof; (iv) such identified road transport service(s) should be run and operated by the State Transport Undertaking; and (v) the State Transport Undertaking can run and operate such identified road transport services to the exclusion, complete or partial, of the existing private operators or otherwise. The formation of opinion by the State Government should not merely be ceremonial but be based upon adequate information, facts and figures or survey etc. though sufficiency of such material on record *per se* may not be a valid ground for the court to interfere in the decision making process. Similarly, the taking over of road transport services by the STUs must be only in public interest and not serve any other purpose. On qualifying these pre-conditions, the road transport services may be taken over by the STUs through a Scheme to the complete or partial exclusion of existing operators.

(57) Conversely, no Scheme can be framed for entities other than STUs. The process of formation of a Scheme or the Scheme itself are not immune from judicial review and if in a given case it is found that the process of formation or the resultant Scheme has failed to qualify all the prescribed tests, the presumptive protection of Article 19(6)(ii) cannot be insisted upon. It must be emphasized here that the Constitutional protection can be sought only if the law imposing reasonable restrictions enables the carrying on of any occupation, trade or business "by the State, or by a Corporation owned or controlled by the State", failing which it will be hit by Articles 14 and 19(1)(g) of the Constitution.

(58) Article 14 of the Constitution commands the State to not deny any person equality before the law or equal protection of the laws within the territory of India. Both the expressions, namely, "equality before the law" or "equal protection of the laws" are basic features of the Constitution hence cannot be transgressed by Parliament or a State Legislature. The guarantee of equality carries a positive concept, therefore, the ground of discrimination can be raised for the purpose of availing legitimate and legally permissible benefits and not for tainting perpetual illegalities. The equality of civil rights declared by first part of Article 14 is wide enough to envelop the entire orbit of State action and it forbids discrimination between similarly placed persons who are to be treated alike in every respect with reference to the subject legislation. Classification which has a reasonable nexus with the subject matter of legislation is not hit by the right to 'equality before the law'. The second part of Article 14 positively obligates the State to provide everyone equal protection of the laws through the desired social and economic, changes and by doing away with the inequalities. It necessarily means that the right to equality of treatment applies to the equals only and different treatment to un-equals is permissible, for what has been prohibited is the discrimination amongst the equals only.

(59) In the context of the present controversy, the challenge to the reasonableness of classification ought to be tested on the touchstone of Article 19(6) of the Constitution which qualifies the Fundamental Right "*to practise any profession, or to carry on any occupation, trade or business*" guaranteed under Article 19(1)(g) and authorizes the State to make any law, imposing in the interests of the general public, reasonable restrictions on the exercise of the aforestated right and, in particular enables the State to make

law relating to *"the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise"*.

(60) The power to impose reasonable restriction under Article 19(6), however, is with a purpose, to strike a balance between the freedom guaranteed by Article 19(1)(g) and the social control permitted by any of its Clauses (2) to (6). It connotes that limitation imposed on a person in the enjoyment of a right could not be arbitrary or of an excessive nature beyond what is required in the interest of the public. The reasonableness of the restriction thus has to be determined objectively from the stand-point of the interests of the general public and not of those upon whom the restrictions are imposed.

(61) In ***Akadasi Padhan*** versus ***State of Orissa & Ors. (13)***, the constitutionality of some of the provisions of Orissa Kendu Leaves (Control of Trade) Act, 1961 were assailed on the plea of imposing unreasonable restriction. The Supreme Court held that if a law is passed creating a State monopoly and the working of the monopoly is left either to the State or to the officers of the State or to the Department of the State or to persons appointed as agents who carry on the work of monopoly strictly on behalf of the State, that would satisfy the requirements of Article 19(6)(ii) but on facts, it quashed the clause of agreement entered into by the State with the agent on finding that **"if the agreement is broadly considered, it leaves no room for doubt that the person appointed under the agreement to work the monopoly of the State is not an agent in the strict and narrow sense of the term contemplated by Article 19(6)(ii). The agent appointed under this agreement seems to carry on the trade substantially on his own account, subject of course, to the payment of the amount specified in the contract. If he makes any profit after complying with the said terms, the profit is his, if he incurs any loss owing to circumstances specified in clause (6), the loss is his. In terms, he is not made accountable to the State Government; and in terms, the State Government is not responsible for his actions".**

(13) AIR 1963 SC 1047

(62) In ***Gullapalli Nageswar Rao*** and ***JY Kondala Rao*** versus ***APSRTC (14),*** provisions of Chapter IV-A of the 1939 Act were challenged on various grounds including infringement of the Fundamental Rights under Articles 14 & 19(1)(g) of the Constitution. It was held that sub-Clause (ii) of Article 19(6) is couched in a very wide term under which the State can make law for carrying on a business or service to the exclusion, complete or partial, of its citizens and thus empowered the State to do business in the entire State or a portion of the State or in a specified route or a part thereof. Section 68-C of the old Act was held to have not exceeded the limits prescribed by Article 19(6)(ii) of the Constitution. The plea of violation of Article 14 was also rejected laying down that "the provisions of the Scheme do not make any distinction between individuals operating a transport service and private transport undertakings; they are all treated as one class and the classification is only made between the State Transport Undertaking and private transport undertakings, whether the business is carried on by individuals or firms or companies". Yet another attack on Section 68-C of the old Act on the alleged violation of Article 14 failed in ***Ram Nath Verma*** versus ***State of Rajasthan (15).***

(63) In ***Sher Singh*** versus ***UOI (16),*** Section 47[1- II] of the repealed Act which gave preference to STUs in granting permits was challenged, it being violative of Articles 14 and 19[1][g], by a private operator. The provision was upheld being protected under Article 19[6] laying down that preference to a public undertaking is in public interest as its earnings are for public purpose.

(64) The principles for determining reasonableness of the restrictions imposed under Article 19(2) to (6) have been summed up by the Hon'ble Supreme Court in ***MRF Ltd.*** versus ***Inspector, Kerala Government (17),*** in the following relevant extraction:-

> "(1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.

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(14) AIR 1961 SC 82
(15) AIR 1967 SC 603
(16) (1984) 1 SCC 107
(17) (1998) 8 SCC 227

(2) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(3) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

(65) It stands crystallized from the cited decisions and the general principles discussed above that Section 68-C of 1939 Act which was in *pari materia* with Section 99 of the 1988 Act was expressly upheld by the Hon'ble Supreme Court and the deviation of the State from Fundamental Rights while walking through the tightrope of 'reasonable restrictions' within the meaning of Article 19(6)(ii) of the Constitution has also got a seal of approval in public interest. The supremacy of Chapter-VI over Chapter-V or any other law, in the event of inconsistency, is thus beyond any debate.

Case law with reference to a Scheme:

(66) The validity of a Scheme formulated under Chapter IV-A (1939 old Act) or its equivalent i.e. Chapter-VI (1988 new Act) has been subject matter of judicial scrutiny in several decisions. In ***Smt. Saraswati Devi & Ors.*** versus ***State of Uttar Pradesh & Ors. (18),*** it was held that a Scheme envisaged under Section 68-C must conform to two conditions, namely, (i) before preparing and publishing the Scheme, the STU must form an opinion that such a Scheme is necessary in public interest; and (ii) the necessity for the road transport services to be run and operated by the STU must flow from the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service.

(67) ***Abdul Gafoor*** versus ***State of Mysore (19),*** laid down that when a Scheme was notified, the Regional Transport Authority had no

(18) (1980) 4 SCC 738

(19) AIR 1961 SC 1556

option but to refuse permit to the private operators in case the STU had either applied or had been granted permit on a route notified under that Scheme. It was also held that a Scheme may notify a route or an area or their portion and the exclusion of private operators from such route or its portion, can be either complete or partial. Following ***Abdul Gafoor***, the Supreme Court in ***Neel Kanth Parsad*** versus ***State of Bihar (20)***, held that since the intention of Chapter IV-A (old Act) was to exclude private operators completely from running certain sectors or routes vested in State Transport Undertakings, the private operators were not entitled to run those portions of their routes which were notified as part of the Scheme. In ***Capital Multi-purpose Co-operative Society*** versus ***State of Madhya Pradesh (21)***, the Supreme Court turned down the contention that the objections submitted against a proposed Scheme required any express findings or that the Central/State Government should be asked to produce records relating to the equipment and financial position of the STUs and that the nationalized routes are to be meant exclusively for the STUs without any comparison of their service with private operators. In ***Vikram Shitole*** versus ***MP State Road Transport Corp. (22)***, also, it was ruled that once a Scheme has been notified the preexisting operators cease to operate on the frozen routes "except in accordance with the Scheme" and that the STU cannot allow a private operator as its nominee to operate under the permit issued under Chapter IV-A (old Act) on the notified route.

(68) In ***AP State Road Transport Corp.*** versus ***PV Ramamohan Chowdhary & Ors. (23)***, the Scheme formulated under Section 68-C of the old Act was attacked on the anvil of Article 14 as some of the routes were exempted while the others were nationalised. The contention, however, was repelled observing that "even on a partial overlapping approved Scheme private operators have been totally prohibited to have corridor shelters and could no longer enter into the frozen area, route or part thereof and obtain permit to render transport service to the travelling public. When that be so, the partial exclusion does not offend Article 14 of the Constitution".

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(20) AIR 1962 SC 1135
(21) AIR 1967 SC 1815
(22) (1997) 3 SCC 498
(23) (1992) 2 SCC 235

(69) In ***BH Aswathanarayana Singh etc.*** versus ***State of Mysore & Ors. (24),*** a Scheme formulated under Section 68-C of the old Act was challenged on various grounds like vague and non-specific contents, violation of principle of natural justice, bias of the decision-making authority etc. The challenge was grounded laying down that a Scheme would not be invalid for nondisclosure of precise number of vehicles and trips as the words "nature of the services proposed to be rendered" refer to the class of service to be taken over and even if the minimum and maximum number of vehicles and trips are not mentioned, it does not contravene Section 68-E. In ***TN Raghunatha Reddy*** versus ***Mysore State Transport Authority (25),*** the challenge to the Scheme on varied grounds including an inter-State agreement contrary to the provision of the Scheme, was rejected holding that an inter-State agreement does not override the provisions of Chapter IV-A of the old Act and such an agreement is not a law, besides the fact that even a law inconsistent with Chapter IV-A was liable to be overlooked in view of Section 68-B (in *pari materia* with Section 98 of the new Act).

(70) ***UP State Roadways Transport Corp.*** versus ***Anwar Ahmad & Ors. (26),*** lays down that once the Scheme has been approved and notified, right to ply stage carriages by private operators on the notified area, routes or portion thereof is totally frozen. They have no right to claim any grant of stage carriage, temporary or contract carriage permits on the notified area, routes or portions thereof **except to the extent saved by the Scheme with restrictions imposed thereunder**.

(71) In ***Secretary, Quilon District Motor Transport Workers' Co-op. Society Ltd.*** versus ***Regional Transport Authority & Ors. (27),*** as well as in ***Gajraj Singh & Ors.*** versus ***State Transport Appellate Tribunal & Ors. (28),*** cases, Section 217 of the 1988 Act pertaining to repeal and savings read with Section 6 of the General Clauses Act was considered, laying down that the Stage Carriage Permits granted under the 1939 (repealed) Act were not saved by Section 217(2)(b) nor such permits could be taken away under the 1988 Act and the willing operators were

(24) AIR 1965 SC 1848
(25) AIR 1971 SC 1662
(26) (1997) 3 SCC 191
(27) (1994) 3 Suppl. SCC 210
(28) (1997) 1 SCC 650

required to apply for the grant of fresh permits under the new Act. However, as regards a Scheme published under the repealed Act, it was held that such Scheme are saved by Section 217 therefore, "until they are modified or cancelled under Section 102, the Scheme should continue to be in operation in the notified area, route or part thereof. The right to apply for and obtain permit in the notified Scheme was totally frozen to the private operators giving exclusive right to the STU to apply for and obtain permits to run the stage carriages or additional service under Section 101 of the Act on the notified area, route or a part thereof and none else". It was further held that "the rights of the existing named operators saved in the appropriate approved Schemes in respects of specified permits were not destroyed. By necessary implication of Section 104, they were saved. They became entitled to avail of their right to apply for grant of permit in accordance with the procedure prescribed under Sections 70 & 71 and to obtain permit under Section 72 before the expiry of the permit or renewed permit saved under the approved Scheme...".

(72) In ***Jagdip Singh's*** case provisions of the 1988 Act along with some clauses of the impugned Scheme of Punjab State were considered. It was held that the main purpose of Section 99 is to have some routes/ area reserved for STUs for the purpose of providing road transport service in public interest i.e. to say "larger number of buses operating on different routes for the convenience and benefit of the travelling public at a cheaper rate" and that the Scheme could be made applicable only if the STU is to operate on a particular route. Since the impugned Clause of the Scheme did not provide that the routes mentioned therein were to be covered and operated completely or partially by the STU, that Clause (7-A) of the impugned Scheme was struck down as it was not in conformity with Section 99 of the Act. ***Subhash Chander & Anr.*** versus ***State Transport Appellate Tribunal & Ors. (29),*** ironed out the left out creases laying down that the vague and general clauses in a Scheme under Section 99 cannot be used to reserve routes on the assumption that "some time in future" the STU may operate on such route and that every Scheme must set out details stipulated in Section 99, with a dominant purpose to create efficient and properly co-ordinated road transport service, instead of frustrating Section 80(2) by bringing in '*Permit Raj*' again through the back door. It

(29) (2002) 4 SCC 168

was further held that the State Government while framing the Scheme "is not empowered to provide that only a few private operators would operate on a particular public route".

(73) ***Ram Krishan Verma & Ors.*** versus ***State of UP & Ors. (30),*** also ruled that since Chapter-VI overrides Chapter- V and other laws. a Scheme formulated under the 1939 repealed Act or under the 1988 (new) Act shall have over-riding effect, hence "corridor protection to private operators is not permissible". In ***Adarsh Travels Bus Service & Anr.*** versus ***State of UP & Ors. (31),*** the question that arose for consideration before the Constitution Bench was that where a route is nationalized under the Scheme, can a private operator with a permit to ply a stage carriage over another route but having a common overlapping sector with the nationalized route ply his vehicle over that part of the overlapping common sector if he does not pick-up or drop passengers on the overlapping part of the route? The sacrosanctity of the Scheme was upheld and the contention to reconcile Chapters IV & IV-A of the old Act was turned down after giving true and rational meaning to various provisions of Chapter IV-A of the old Act.

(74) In ***M. Madan Mohan Rao & Ors.*** versus ***Union of India & Ors. (32),*** a Scheme formulated by Government of Andhra Pradesh under Section 100 of the 1988 Act for exclusive operation of Stage Carriage Services on certain routes by APSRTC was challenged on the grounds of it being violative of Article 19[1][g], principles of natural justice and non-application of mind. The challenge was rejected holding that Chapter-VI contains specific provisions and those provisions have been given over-riding effect notwithstanding anything inconsistent therewith contained in Chapter-V or in any other law and once the State Government formulates a Scheme, "no private operator can operate his services on any part or portion of a notified area or notified route unless authorized so to do by the terms of the Scheme itself". ***Karnataka State Road Transport Corporation*** versus ***Asharfulla Khan & Anr. (33),*** also reiterated and

(30) (1992) 2 SCC 620
(31) (1985) 4 SCC 557
(32) (2002) 6 SCC 348
(33) (2002) 2 SCC 560

held that the formulation of a Scheme under the repealed or the new Act to the complete or partial exclusion of the private operators is saved by Article 19[6], hence it does not hit Article 19[1][g] of the Constitution.

(75) A recent decision in ***Punjab Roadways Moga through its General Manager*** versus ***Punja Sahib Bus and Transport Co. & Ors. (34),*** needs special reference. In that case the Regional Transport Authorities granted Stage Carriage Permits to the STUs which were quashed by the High Court at the instance of the private operators, primarily on the ground that the STUs though were granted the permits but were not operating the services. The aggrieved STUs preferred appeals before the Supreme Court taking a plea that even if the STUs had failed to utilize the permits or surrendered the same, those permits could be re-allotted only by inviting fresh applications. The question that arose for consideration was whether a direction could be issued by the High Court to the RTAs to grant regular permits to private operators on the ground that the STUs had either failed to utilize the permits granted or surrendered the permits or had not applied for the permits in the notified routes. The Supreme Court in order to find out answer to the question minutely referred to different clauses of the 1990 Scheme as modified on October 21, 1997, especially clause 5 thereof prescribing a ratio between the STUs and the private operators and disapproved of the view taken by the Tribunal or the High Court. It held that the Scheme once published is 'law' and Chapter-VI has an over-riding effect on Chapter-V of the Act and it operates against any one unless it is modified or cancelled by the State Government. "The Scheme also provides for a ratio with regard to the grant of permits on the notified routes between STUs and private operators which is fixed based on the assessment made by the State Transport Commissioner, Punjab on the basis of the passenger road transport needs **which is legally binding on all**. The provisions of the Scheme including the list of routes mentioned in the various annexures, and the ratio fixed are statutory in character which can not be tinkered with by the RTAs and have over-riding effect over the powers of RTAs under Chapter-V of the Act". It was further ruled that "once a Scheme is approved and published, private operators have no right to claim regular permits to operate their vehicles in the notified area, route or portion thereof upsetting the ratio fixed". The Supreme Court also approved partial exclusion

(34) (2010) 5 SCC 235

of the private operators by the 1990 Scheme as amended from time to time laying down that "since the Scheme makes provision for partial exclusion, the private operators are not completely excluded, they may get regular permits on the notified route or portion thereof in accordance with **the terms and conditions laid down in the Scheme and within the quota earmarked for them".**

(76) The Hon'ble Supreme Court in ***Punjab Roadways, Moga's*** case itself, on a combined reading of Sections 99, 100 and 104 along with Section 2[38] of the Act, removed the doubts, if any were ever left, by setting out that once a Scheme is published under Section 100 in relation to any area or route or portion thereof, whether in complete or partial exclusion of other persons, no person other than the STUs have a right to operate on the notified area or route "except as provided in the Scheme itself and wherever the STU in spite of grant of permit does not operate the service, the only recourse is to invoke powers under proviso to Section 104 and grant temporary permits to the private operators".

Is there any conflict between the Constitution Bench decision in *M/s. Adarsh Travels Bus Service* case followed in *Ram Krishan Verma & Ors.* case, and the later decisions in (i) *Jagdip Singh* and (ii) *Subhash Chander & Anr.* cases?

(77) In ***M/s. Adarsh Travels Bus Service*** case, the Constitution Bench of the Hon'ble Supreme Court considered Section 68-C of the 1939 Act which was equivalent to Section 99 of the 1988 Act and on its interpretation, approved the formulation of a Scheme to the partial exclusion of private operators and further held that once such a Scheme is published in relation to any area or route or portion thereof, no person other than the STU may operate on the notified area or notified route **except as provided in the Scheme itself**. The aforesaid view was followed and reiterated in ***Ram Krishan Verma*** and several other cases. The later decisions in ***Jagdip Singh*** and ***Subhash Chander & Anr.***, dealt with Clause (7-A) of Punjab Scheme inserted on October 21, 1997 which did not provide that the routes mentioned in that Clause are to be covered and operated completely or partially by the STU. The Apex Court observed that in such cases **"Section 80(2) would be applicable as under Section 99, the State Government is not empowered to provide that only a few private operators would operate on a particular route/routes...".**

(78) On a thorough reading of the decisions under consideration along with other cited cases, we do not find any note of discordance in the two sets of decisions. Albeit, it has been firmly crystallized that once a Scheme is published, the permits to private operators to the extent of partially notified area or routes, shall also be granted or regulated by the Scheme and not under Section 80 or Chapter-V of the 1988 Act. The observations in ***Subhash Chander & Anr.*** case are in the context of the object for which powers under Section 99 are exercisable by a State Government. The judgement's ratio is not to the effect that if there is a Scheme to the partial exclusion of the private operators, the permits are to be granted to the private operators under Chapter-V only. Our understanding of the case law is fortified by the view taken by the Supreme Court in two recent decisions, firstly in ***Rasid Javed & Ors.*** versus ***State of UP & Anr. (35),*** and secondly in ***Punjab Roadways, Moga's*** case, when the later decision observes to the following effect:-

> *"Therefore, a combined reading of Sections 99, 100 and 104 in the light of Section 2(38) of the Act, makes it clear that once a scheme is published under Section 100 in relation to any area or route or portion thereof, whether in complete or partial exclusion of other persons, no persons other than STUs may operate on the notified area or route except as provided in the scheme itself..."*

(79) The conspectus of the case law which we have briefly discussed, inescapably holds that -

> (i) the fundamental right to carry on trade or business within the meaning of Article 19[1][g] is not an absolute right and is subject to not only the reasonable restrictions that the State may impose but also to the law for carrying on any trade, business, industry or service by the State or by a Corporation owned or controlled by the State, whether to the exclusion, complete or partial, of citizens or otherwise;
>
> (ii) Section 99 of the 1988 Act is consistent with Article 19[6][ii] of the Constitution and it has been so upheld in various cited decisions;

(35) (2010) 7 SCC 781

(iii) Since the Constitution itself enables the State to legislate and monopolise its control over any trade, business, industry or service to the complete or partial exclusion of the citizens, it is unarguable to say that a Scheme to be formulated under Section 99 of the 1988 Act cannot be to the complete or partial exclusion of private operators;

(iv) Once the State Government formulates a Scheme by following the procedure or the preconditions enumerated in Section 99, such Scheme, notwithstanding anything inconsistent therewith, shall override Chapter-V or any other law for the time being in force;

(v) There are two facets of the legislative policy embodied in the 1988 Act, namely, liberalization of permits to be issued on demand under Chapter-V so as to infuse a healthy competition *inter se* amongst the private and State-run operators but the other side engraved in Chapter-VI suspends the liberalized policy and creates monopoly in favour of the STUs on the notified routes provided that it is so necessary in public interest;

(vi) Thus when there is a Scheme which in itself is law, the liberal policy of Chapter-V becomes quiescent and the entire field is occupied by the Scheme only;

(vii) If the Scheme has been formulated to the partial exclusion of private operators, the permits in respect of the exempted routes or area or portion thereof shall also be granted under the Scheme only and not under Chapter-V, for the latter becomes latent with the enforcement of the Scheme;

(viii) As regards the notified routes to be operated upon by the STUs, whether labelled as monopoly routes, State Highways etc., the Authorities under the Act have no discretion except to issue permit in favour of the STUs only for such routes save as where the STUs fail to apply for issuance of permits that *proviso* to Section 104 can be invoked to issue temporary permits to private operators;

(ix) The popular terms of the trade like, 'corridor protection' or 'over-lapping routes' etc. are also to be construed and settled in terms of the notified Scheme.

Rule 128 of the Punjab Motor Vehicles Rules, 1989:

(80) Adverting to the validity of Rule 128 of the Punjab Motor Vehicles Rules, 1989, it is true that such like provision which contemplates to invite applications within the prescribed period from private operators for the grant of Stage Carriage Permit is derogatory to the Scheme of liberalization propagated by Chapter-V, however, there has come a plausible explanation that the aforesaid Rule has been framed to give effect to Section 99 of Chapter-VI, namely, the permits to be awarded to private operators under the Scheme. It is well known that a rule cannot be invalidated only because the provision under which it was promulgated had been wrongly quoted, provided that the Statute otherwise vests the authority with such rule-making power.

Whether the Punjab Scheme dated August 8, 1990 as modified on October 21, 1997 and December 20, 2011 is valid in law?

(81) The litmus test for determination is whether the Scheme dated August 9, 1990 as modified on October 21, 1997 or on December 20, 2011 infringes any provision of the Constitution or the prerequisites of Section 99 of the 1988 Act?

(82) True it is that Section 102 of the 1988 Act empowers State Government to cancel or modify an approved Scheme if it is necessary to do so in public interest, after following the prescribed procedure. The lexicon meaning of the word "modification" is "a change to something; an alteration, a qualification or limitation of something". Merriam Webster defines "modification" to mean "the act, process or result of making different". The Supreme Court in ***Lachmi Narain & Ors.*** versus ***Union of India (36)*** and ***Authorised Officer & Anr.*** versus ***S. Nagantha Ayyar & Ors. (37),*** has given a restrictive meaning to "modification" "*to adjust, adapt and make the enactment suitable... and for carrying it into operation*" and that it does not include "*a change in any essential feature of the enactment or the legislative policy built into it*". The power of 'modification' of a Statute or Policy therefore need not be construed in parity with power of 'amendment' in such Statute or Policy. The expression

(36) AIR 1976 SC 714
(37) (1979) 3 SCC 466

"modification" essentially is a restrictive connotation which permits superficial, consequential or incidental changes without altering the original characteristic of a Policy. Once Section 99 and 102 are read in conjunction it implies that the basic features of a Policy formulated under Sections 99 & 100, cannot be amended under Section 102 to an extent that the Policy loses its original face or features though nothing precludes the State Government to cancel the previous policy and formulate a new one by following the prescribed procedure. We are constrained to observe and convey our displeasure that instead of travelling through the defined route of Sections 99 and 100 and formulate a new Scheme, State of Punjab has opted for a shorter passage under Section 102 for the substitution of the original Scheme and that too without issuing a composite notification of the 'saved', 'modified' or 'substituted' clause(s) of the Scheme.

(83) There can, however, indeed be no quarrel that a Scheme notified under Section 99 though enjoys upon the assorted status of 'law' within the meaning of Article 13 of the Constitution and such Scheme has an overriding effect even if it is inconsistent with Chapter-V of the 1988 Act or any other law for the time being in force, nonetheless a Scheme like any other law must satisfy the test of Constitutionality as also ingredients of Section 99 of 1988 Act to which it owes its existence. If a notified Scheme violates the Constitutional rights or has been formulated contrary to public interest or if it does not serve the avowed object of providing efficient, adequate, economical and properly co-ordinated road transport service, it is liable to be axed.

(84) Let us now analyse the Punjab Scheme(s) which is truly a Herculean task due to the defacement of the original Scheme through sweeping amendments made firstly on October 21, 1997 and then on December 20, 2011.

(85) Clause (1) of the original Scheme dated August 9, 1990 contained definitions of words and phrases relied upon in the Scheme. The Clause (2) provided that "all inter-State routes shall be operated by the STU as hither-to-fore and present operation of private operators shall remain unaffected till the validity of their route permits or for three years from the date of final publication of the Scheme, whichever is later. This may be reviewed after three years by the State Government provided that the routes

operated by the private operators which become inter-State routes as a result of reorganization of the State of Punjab in the year 1966, shall not be affected by this Scheme". This Clause was completely replaced on October 21, 1997 adding in the first part that **"operations of private operators whose permits were valid for a period of three years from the date of the publication of the Scheme, shall remain unaffected".** After the original *proviso*, two more *provisos* were added to protect the private operators on a route falling in a State other than the Punjab State and who were operating through reciprocal agreements or counter-signed permits as also those private operators who were running air-conditioned buses from different destinations in the State of Punjab to U.T., Chandigarh. The Clause (2) as also the above-mentioned two *provisos* added on October 21, 1997 were invalidated by this Court in ***Sirhind Bus Service (Regd.)*** and ***Maharaja Travels' cases***.

(86) Clause (2) of the Scheme has again been replaced vide notification dated December 20, 2011 and it says that "all stage carriage permits, which were granted in favour of the STUs and private operators, on the inter-State routes shall remain unaffected till the date of their expiry". The modified Clause does not contemplate granting of new inter-State permits to STUs or the private operators and it only saves such permits already granted in their favour. The saving of old permits under this Clause appears to be consistent with Section 217-A of the 1988 Act, hence warrants no interference. The first *proviso* is the same as was in the year 1990. We clarify that Clause (2) along with its first *proviso* would not offend Section 100(3) of the 1988 Act so long as these provisions merely save the old permits, without conferring power to issue new inter-State permits without previous approval of the Central Government. A second *proviso* has now been added stating that *"operation of any State Transport Undertaking, other than that of the State of Punjab or any Union Territory, as the case may be,* ***including the private operators*** *of such other State or Union Territory operating by virtue of reciprocal agreement or permits...* ***shall also remain unaffected***".

(87) The modified Clause (2) of the Scheme along with its *provisos*, as discussed above, sans the evil detected in its original form and no more suffers from any legal infirmity also for the reason that the newly added second *proviso* keeps only those permits of the STUs or private operators

of other States/UT unaffected which are operative by virtue of reciprocal agreement or permits granted by such other State/UT and are thus in consonance with Section 88(4) to (6) of Chapter-V.

(88) Clause (3) of the Scheme as modified on December 20, 2011 provides that all future Stage Carriage Permits for operation on inter-State routes as per the reciprocal agreements or mutual understanding between the State and the Union Territory concerned, shall exclusively be granted in favour of the State Transport Undertaking. There were five *provisos* added to Clause (3) vide Notification dated December 20, 2011 but vide corrigendum dated April 20, 2012 the third, fourth and fifth *provisos* to Clause (3) have been deleted whereas Clause (4) has been added in the Scheme. The left out intact *provisos* to Clause (3) are to the following effect:-

> *"Provided that a permit, may be granted to a private operator for operation of an Air-conditioned Integral Coach or a Super Integral Coach, as the case may be, from a district head quarter or any important town and the Union Territory, and on the basis of the need so assessed by the State Transport Commissioner, from time to time:*
>
> *Provided further that the private operators of the Heat Ventilation and Air Conditioned Buses (HVAC) and Air-conditioned Integral Coaches or Super Integral Coaches, as the case may be, may also be allowed to operate on the neighbouring inter-State routes (maximum up to a distance of fifteen kilometers) falling in any other State if the terminal falls within that limit, subject to the conditions agreed to in the reciprocal agreement with the State concerned:"*

(89) The first *proviso* to Clause (3) apparently facilitates transport connectivity between the UT Chandigarh which is the Capital headquarter of Punjab State and the District headquarters or important towns and is based upon reciprocal agreement between State of Punjab and UT Chandigarh. The said Clause thus does no violence to Section 99 of the Act.

(90) There is, however, no separate definition of (i) AC Integral Coach; (ii) Super Integral Coach; (iii) Head Ventilation and AirCWP conditioned Buses; (iv) Air-conditioned Integral Coaches; and (v) Super Integral Coaches in the 1988 Act. With the aid of superficial classification introduced through second *proviso* to Clause (3), the private operators of air-conditioned luxury buses/coaches have been allowed to operate their vehicles on the "neighbouring inter-State routes" upto a distance of 15 kms. subject to the reciprocal agreement with that State. The said *proviso* is conspicuously silent about a similar arrangement for the STUs for whom alone a Scheme can be promulgated. The actual effect of the second *proviso* when read in conjunction with Clause (3), is that while the private operators continue with their current operations, the STUs can get exclusive permits in 'future' only. If the STUs do not have HVAC buses, it is undoubted that they cannot get a Stage Carriage Permit under the second *proviso* to Clause (3) even in future also. The second *proviso* thus discreetly creates monopoly in favour of the private operators having the vehicle of a specific 'make' which the others might not have. The penultimate effect of the second *proviso* therefore is directly opposite to the object of Section 99 and hence it cannot sustain in law.

(91) We may at the cost of repetition state here that the third *proviso* to Clause (2) and Clause (7-A), respectively added in the year 1997 to the Scheme were struck down by this Court in ***Maharaja Travels (Regd.)*** and the Hon'ble Supreme Court in ***Jagdip Singh*** and ***Subhash Chander & Anr.*** cases respectively, for not being in conformity with Section 99 and also for the reason that the Scheme cannot be **vague**.

(92) We now turn to Clause (4) of the Scheme. The 1990 Scheme said that "all operations existing or future on monopoly routes shall exclusively be undertaken by the STUs". The Scheme as modified on October 21, 1997 added two *provisos* to Clause (4) prescribing a ratio between the STUs and private operators for operation on monopoly routes. The Notification dated December 20, 2011 read with corrigendum dated April 20, 2012 has again restored Clause (4) as it existed in the 1990 Scheme. This Clause completely excludes private operators from future operations on 'monopoly routes'. Similarly, Clause (5) retains the ratio of 75:25 between STUs and private operators for operation on National Highways falling within the State. Both the clauses are thus within the acceptable boundaries of Section 99 of the Act.

(93) While Clause (6) of the Scheme distributes all future Stage Carriage Permits between STUs and private operators on the State Highways falling within the State (except the routes specified in Clauses (2), (3) & (4) in the ratio of 40:60, its Clause (7) provides for the same ratio between STUs and private operators in respect of all future Stage Carriage Permits on the district and other roads falling within the State [except the routes specified in Clauses (2), (3) & (4)]. A Scheme envisaging partial exclusion of private operators can legitimately prescribe such like ratio for different notified routes. Clause (7-A) which was added on October 21, 1997 has been omitted for the obvious reason that it was struck down by the Hon'ble Supreme Court in ***Jagdip Singh's*** case (supra).

(94) The modified Scheme dated December 20, 2011, however, has added two significant Clauses Nos.(8) & (9) which are to the following effect:-

> *"(8) The existing operations of the stage carriage permits of the State Transport Undertakings and the private operators of the State of Punjab, shall remain unaffected.*
>
> *(9) All existing permits may be renewed after their expiry in accordance with the provisions of Section 81 of the Motor Vehicles Act, 1988."*

(95) It may be seen that while Clause (8) declares that "existing operations" of the Stage Carriage Permits of "private operators" (also) shall remain unaffected, Clause (9) enables renewal of "all existing permits" after their expiry in accordance with Section 81 of the 1988 Act. The modified Scheme dated December 20, 2011 does not define or clarify those "existing operations" which are saved by its Clause (8). It would be well understood in the common parlance as also on the literal interpretation of these Clauses that all those permits which were operative as on December 20, 2011 have been saved and declared unaffected. All such 'existing permits' can be renewed also under Clause (9) of the Scheme. Does the phrase "existing permits" include the permits issued or renewed under Clause (2) of 1990 Scheme also until it was held illegal by this Court in ***Sirhind Bus Service Registered*** and also those issued/renewed under third proviso to Clause (2) added in the year 1997 and which was annulled in ***Maharaja Travels***

Registered, Amritsar case? Whether the permits granted or renewed under Clause (7-A) which was struck down by the Apex Court in ***Jagdip Singh's*** case too form part of the "existing permits"?

(96) Clause (8) added on December 20, 2011 is couched so vaguely with evasive phrases that it may even nullify the binding decisions cited above, and facilitate backdoor entry for illegally issued permits. We say so for the reason that when the very source of power to grant or renew such permits was held illegal or unauthorized, the consequential action taken in exercise of such power cannot be legitimate. The power of 'modification' under Section 102 cannot be invoked to legalise an illegal act taken in defiance of Section 99 of the 1988 Act. The Executive cannot resort to a recourse which is alien to the rule of law nor can it do anything indirectly which could not be done directly. Any favourable inclination shown towards illegally issued permits cannot withstand the test of reasonableness and equality within the meaning of Part-III of the Constitution.

(97) Before commenting further on Clause (9) with reference to its power to renew "all existing permits", it may be mentioned that Section 217(2)(b) of the 1988 Act saved a permit issued or granted under the repealed Act "for the same period" as if the 1988 Act had not been passed. Hon'ble Supreme Court interpreted that provision in ***Gajraj Singh & Ors.*** and ***Secretary, Quilon District Motor Transport Workers' Co-operative Society Ltd.*** and held that permits under the old Act were saved to the extent of expiry of their validity period of five years and such permits could not be renewed under the 1988 Act and those permit holders were obligated to apply for new permits.

(98) It might be so that to overcome the difficulties experienced in renewing the old permits as a result of the above-cited decisions that Parliament inserted Section 217-A in the 1988 Act on August 11, 2000 which reads as follows:-

> ***"217-A. Renewal of permits, driving licences and registration granted under the Motor Vehicles Act, 1939.*** *– Notwithstanding the repeal by sub-section (1) of section 217 of the enactments referred to in that subsection, any certificate of fitness or registration licence or permit issued or granted under the said enactments may be renewed under this Act."*

Whether Section 217-A is prospective or has retrospective effects?

(99) Section 217-A, thus, enables the competent authority to renew a permit under the 1988 Act even if it was issued under an enactment which has been repealed by Section 217(1) of the 1988 Act. Now what has been hotly debated before us is whether Section 217-A is retrospective or prospective w.e.f. August 11, 2000 only? The petitioners with full vehemence at their command argued that the Legislature has not enforced the aforesaid provision retrospectively, either expressly or by necessary implication, whereas learned counsel for the State and the STUs maintained that Section 217-A being declaratory and clarificatory in nature has retrospective effects.

(100) It is well settled that if a statute or any of its provisions is curative and declaratory of the intentment of the previous law, it may generally be retrospective in operation. An amending Act when legislated to clear the meaning of a provision of the principal Act which was already implicit and is thus clarificatory, will also have retrospective effect. Similarly, the date when the amended provision becomes operative does not conclusively decide whether the amendment is clarificatory or declaratory. The Scheme of the Statute before and after the amendment would be a key factor to determine whether amendment is clarificatory or substantive. It also implies that even if the Statute contains a statement to the effect that the amendment is clarificatory or declaratory, it is not necessary to accept such declaration as the analysis of the nature of amendment alone will determine whether it is in reality a clarificatory or declaratory provision. Halsbury's rule is that *"all Statutes, **other than those which are merely declaratory**, or which relate only to matters of procedure or of evidence, are prima facie prospective..."* (emphasis applied).

(101) Since remedial statutes are to be construed liberally, the inhibition of the rule against retrospective construction is applied reluctantly. Similarly, Statutes providing new remedies for enforcement of existing rights will apply to future as well as past causes of action for the reason that such Statutes do not affect existing rights and are classified as procedural. Likewise, the fact that a prospective benefit under a statutory provision in certain cases is to be measured by or depends on antecedent facts, does not necessarily make the provision retrospective.[1]

[1]Ref. (i) Rattan Lal vs. State of Punjab, AIR 1965 SC 444; and (ii) Jahiruddin vs. Model Mills, AIR 1966 SC 907.

(102) Section 58(1)(a) of the 1939 (repealed) Act prescribed 'not more than five years' validity period for a Stage Carriage Permit without renewal. 1939 Act was repealed by the 1988 Act w.e.f. 1st July, 1989. As noticed above, Section 217(2)(b) of the new Act as interpreted by the Supreme Court, saved the permits issued under the old Act till the expiry of their validity period. Assuming that a permit was issued on the last operative day of the 1939 Act, its maximum period of five years expired on 30th June 1994. It was thus in the knowledge of the Legislature when it inserted Section 217-A on August 11, 2000 that the permits issued under the 1939 Act or other repealed legislations were no longer valid and had expired and as such they could not be renewed under Section 81 or under a Scheme framed under Section 99 of the 1988 Act. Yet the Legislature consciously inserted the provision for renewal of permits "issued or granted" under the repealed legislations. The fact that Parliament intended to confer power to renew the expired permits granted under the 1939 Act is writ large in the Statement of Objects and Reasons of the Motor Vehicles (Amendment) Act, 2000 also wherein it was stated that *"it is also proposed to allow renewal of permits, driving licences and registration certificates granted under the Motor Vehicles Act, 1939 to be renewed under the Motor Vehicles Act, 1988, by inserting new section 217A"*. The legislative intentment to revalidate and renew the expired permits is reinforced by the *non obstante* clause inserted in Section 217A whereunder the expired permits can be renewed and revalidated.

(103) Parliament has inserted the new provision with a defined object. It is a well known rule of construction that the Legislature does not enact an inconsequential provision nor does it ever use superfluous words. The purpose, namely, renewal of the permits issued or granted under the 1939 Act which is so explicit in Section 217-A, can be achieved only if the newly added provision is construed to mean that irrespective of the expiry of a permit issued or granted under the repealed Act, it can be renewed and re-validated under the 1988 Act. It does not amount to giving retrospective effect to Section 217-A in the sense that the power thereunder can be invoked to renew the expired permits from a date prior to August 11, 2000. It simply means that the subject provision takes stock of the facts antecedent to its enactment to enable the renewal of expired permits

prospectively from the date of its addition to the Statute Book. Section 217-A thus does not create or adversely affect any right retrospectively though it is retroactive in nature.

(104) Having held that Section 217-A is retroactive and operates to cover even those permits which were issued or granted much before it was born or the principal legislation i.e. 1988 Act came into force, we find no difficulty in upholding Clause (9) of the Scheme which enables renewal of the existing permits in accordance with Section 81 of the 1988 Act though with a caveat that the phrase "all existing permits" contained in Clause (9) cannot and shall not include those permits which, by virtue of two decisions of this Court in ***Sirhind Bus Service Registered*** & ***Maharaja Travels Registered*** and that of the Hon'ble Supreme Court in ***Jagdip Singh***, are deemed to have been granted illegally as such permits cannot be legitimized through the newly added omnibus Clauses (8) & (9) of the Scheme. The petitioners are thus labouring under a wrong misconception that the 'existing operators' are being protected through the Scheme whereas the fact of the matter is that they have been shielded by the Legislature through Section 217-A, the *vires* whereof is not under challenge in these proceedings.

(105) The last Clause (10) of the Scheme enables the competent authority to 'curtail' or 'extend' the route or 'increase' or 'decrease' the number of trips of the STUs or a private operator as per the need assessed by the State Transport Commissioner. One has to tread carefully to understand the deep-rooted object behind the words 'curtailed or extended' and 'increased or decreased' and find out whether the self-assumed residuary power under this Clause includes the power to vary and/or defunct rest of the clauses of the Scheme? If Clause (10) had the potential to reduce the ratio of 75:25 between the STUs and the private operators, as prescribed in Clause (5) to 01:99, we unhesitatingly hold such a Clause a tool to misuse the Scheme and favour the private operators leaving the STUs only as illusory permit holders. Contrarily, it will be permissible if Clause (10) is pressed into aid to remove minor irritants that may incidentally occur due to unforeseen circumstances on a notified route. Suffice it would therefore be to observe that instead of striking it down, we direct that Clause (10) of the Scheme shall be understood and implemented only in the manner illustrated above.

(106) There is yet another interesting *proviso* added to Clause (10) which says that *"the operation of an existing permit on a route may be extended upto 24 kms. at a time from the termini which may* ***further be extended upto another 24 kms. from the next termini of the route and so on,*** *on the basis of the passenger and road transport need as assessed by the State Transport Commissioner from time to time"*. The unbridled discretion given under this *proviso* to 'extend' operation of existing permits to an unlimited extent beats all human fancies. Does it not mean that the operation of an existing permit of a private operator can be extended to cover the entire route to the complete exclusion of a STU? Does it also mean that the power conferred under this *proviso* is meant to vary the prescribed ratio or permissible length of permits allottable to private operators under different Clauses of the Scheme? Under this proviso, the operation of an existing permit can be extended firstly upto 24 km. from the termini and then for another 24 km. from the extended termini of the route **and so on**, if it is so justified on the basis of the passenger and road transport need assessed by the State Transport Commissioner. Pertinently, all future Stage Carriage Permits are also to be granted under Clauses (3), (4), (5), (6) & (7) only "on the basis of the passenger and road transport need as assessed by the State Transport Commissioner from time to time". When the Scheme contemplates to grant new permits on such need-based assessment, where does the occasion arise to grant unlimited extension to existing permit holders for the same reason? The aforesaid proviso can have no parallel in legal jurisprudence as it can single-handedly throw the transport business to the days of despotic feudalism of pre-Constitutional era. The mischief behind the insertion of this *proviso* appears to monopolise in favour of existing operators. If new permits are issued, it is evident that part of them, as per the prescribed ratio [except Clause (4)] will have to be granted to the private operators also by inviting applications and through a transparent modicum. The solitary object of this *proviso* is to deny the prospective private operators as well as the STUs from seeking additional permits. In the absence of inbuilt guidelines for the extension of existing permits, *proviso* to Clause (10) is *ex facie* arbitrary and cannot stand the test of Article 14 of the Constitution or Section 99 of the 1988 Act. The said *proviso* to Clause (10) of the Scheme is accordingly struck down.

(107) It is well settled that if the offending portion of a Statute can be severed without doing violence to its remaining part, the Court may invoke the 'doctrine of severability' and strike down the illegal or unconstitutional portion of the provision. A Statute bad in part is not necessarily void in its entirety. The provisions which are in conformity with the law may survive if they are capable of being separated from the illegal provisions.[2]

(108) Following these principles that we have segregated and struck down the offending parts of the Scheme as none of these illegal provisions have any bearing nor are they needed for sustenance of the validly formulated Clauses of the Scheme which remain intact to occupy the field within the meaning of Section 99 of the 1988 Act.

(109) In all fairness to learned counsel for the petitioners, the phrase 'otherwise' contained in Section 99 was strenuously debated to urge that it mandatorily provides for co-existence of the STUs and private operators. The same word in fact occurs in Article 19[6][ii] of the Constitution also and it has been construed as an indicator of the wide nature and amplitude of the State's power to legislate taking into consideration the exigencies of a situation prevailing at the relevant time. The word 'otherwise' gives an expansive meaning to the power of the State for making any law without any restraint on the legislative powers. In other words, the true meaning of 'otherwise', as we have understood, is that the State can enact a law to take over the control of any trade, business, industry or service in a manner which may as well be other than the 'complete' or 'partial' exclusion of the citizens from such trade or business etc. Giving true construction to the word 'otherwise' contained in Section 99, would thus mean that the Scheme formulated under that provision may not necessarily be to the complete or partial exclusion of the private operators and such a Scheme may have some other incidents or consequences also.

(110) Similarly, the allegations regarding political intrusion behind formulation or subsequent modifications of the impugned Scheme, in our considered view, are without any substance. We say so for the reason that the original Scheme was notified in the year 1990 when Punjab State was

[2] Ref: (i) Satyawati Sharma vs. Union of India, (2008) 5 SCC 287; (ii) Motor General Traders vs. State of AP, (1984) 1 SCC 222

under the President's Rule. Thereafter different political parties held the power in their hands for a considerable long period. Otherwise also, the Council of Ministers takes a broad policy decision and consequential nitty-gritties are left to the Officers who are expected to act neutrally without any political allegiance. There is no specific instance on record to draw any different inference.

(111) The petitioners' emphasis that 'no routes have been "nationalised" in the State of Punjab hence the Scheme cannot operate', does not impress us for varied reasons. Firstly, the expression 'nationalization' has been interpreted in ***Maharashtra State Electricity Board*** versus ***Thana Electric Supply Co. & Ors. (38),*** to mean the acquisition and control of privately owned business by the Government. Such an occasion arises when the existing private operators are completely excluded from the transport business on being taken over by the State or the Corporation run by it, for which it is required to pay compensation to the affected operators in accordance with Section 105 of the Act. No compensation was required to be paid in the instant case as the Scheme from the very inception is to the partial exclusion of private operators. Secondly, the private operators existing on the date when the Scheme came into force have been saved under the Scheme leaving them with nothing to claim under Section 105. Thirdly, the grievance to this effect, if any, can be raised by the affected operators only and not by the petitioners. Fourthly, acquisition and operation of business by State Government or its agency does not necessarily mean acquiring ownership of man and machinery also.

(112) The accusation that the Scheme perpetuates monopoly of erstwhile private operators who occupied the field under the 1939 Act, is too wild to be accepted. Save the portions of the Scheme which we have struck down or interpreted to be understood in a definite manner, it is not the Scheme to be blamed for re-induction of the paradigm of 1939 Act, rather it is the Section 217-A which has given rise to such like consequences.

(113) The petitioners' challenge to the Scheme on the plea that it has not given precise particulars, specifications of the routes to be taken over or nationalised or the nature of services to be rendered or the number of buses to be plied as well as the number of trips to be undertaken by

(38) (1989) 3 SCC 616

each vehicle on each route is also unmerited in view of the rejection of challenge to a Scheme on somewhat similar grounds by the Supreme Court in ***BH Aswathanarayana Singh etc.*** case.

(114) The contention that the impugned Scheme merely recites the phraseology of Section 99 without any actual observance, does not find support from the records produced before us. The decision making process reveals that the relevant information was gathered and the object behind the decision to formulate a Scheme was taken in public interest. Similarly, the plea that the modified Scheme dated October 21, 1997 had lapsed, merits rejection as the State Government was required to follow the procedure prescribed under Section 102 and not under Section 100 of the 1988 Act.

Punjab Mini Bus Service Scheme, 2010:

(115) There is a chequered history of the successive attempts made by Government of Punjab to formulate a Scheme in favour of the Mini Bus operators. It appears that a Scheme was notified on June 18, 1980 under Section 68-C of the 1939 Act which contained provision for the operation of mini bus services. After the 1939 Act was repealed and the 1988 Act came into force w.e.f. July 1, 1989, the State of Punjab formulated the Scheme dated August 9, 1990 and its Clause (8)(ii) saved the operation of mini bus services in accordance with the old Scheme dated July 18, 1980 notwithstanding anything contained in the new Scheme. The 1990 Scheme was thereafter modified vide notification dated October 21, 1997 and its Clause (1)(cc) defined "Mini Bus" to mean 'a Stage Carriage the body of which shall be fabricated on a chassis, the wheel base of which does not exceed 137 inches and which does not carry more than 30 passengers beside the driver and conductor'.

(116) The *non obstante* Clause (8)(ii) of the 1990 Scheme protecting mini bus operators was declared illegal and inoperative by a Division Bench of this Court in ***CWP No.11995 of 1992 (Amarjit Singh vs. State Transport Appellate Tribunal, Punjab & Ors.) decided on 21st May, 1993.***

(117) Clause (7-A) of the Scheme as modified on October 21, 1997 which put mini bus operators at an advantage for the grant of permits for operation on routes linking villages without any city, a town or any

municipality in between, was also hammered down by the Hon'ble Supreme Court in ***Jagdip Singh*** and ***Subhash Chander & Anr.*** cases holding that when the STUs are not to operate on the routes covered under that Clause then there was no question of framing any Scheme.

(118) The State of Punjab then proposed Punjab Mini Bus Service Scheme, 2007 under Section 99 of the 1988 Act and invited objections vide Notification dated August 23, 2007. The approved and the final Scheme was published on November 14, 2008 i.e. after the expiry of more than one year. A Division Bench of this Court in ***CWP No.4646 of 2009 (Gurdip Kaur vs. State of Punjab & Ors.) decided on 16th July, 2009,*** dealt with the legality of that Scheme and having found that it was not published within the mandatory period of one year, declared the above-stated Scheme to have lapsed under Section 100(4) of the 1988 Act. It may, however, still be relevant to refer the *proviso* to Clause (3) of the afore-stated lapsed Scheme which prescribed "that the existing mini bus permit holders shall be allowed to continue to operate their mini buses on the same terms and conditions on which they were operating prior to the publication of this Scheme".

(119) Then came the turn of 2010 Scheme now under challenge, the proposal whereof was notified on August 19, 2009 to invite objections under Section 100 of the Act. The final Scheme known as the 'Punjab Mini Bus Service Scheme, 2010' was published on May 19, 2010. The significant and salient features of the Scheme include definitions of "Indicative Routes", "Mini Bus" and "Monopoly Routes" and it pertains to 'routes' only. Its Clause (4) states that "all future operations on monopoly routes shall, exclusively, be undertaken by the State Transport Undertakings". All future operations on the indicative routes are to be undertaken between STUs and private operators in the ratio of 20:80 as prescribed by Clause (5) of this Scheme and subject to the conditions mentioned therein. Two *provisos* to Clause (5) are also of material bearing. While the first *proviso* says that *"the existing mini bus permit holders shall be allowed to continue to operate their buses on the same terms and conditions on which they are operating prior to the publication of this Scheme"*, the second *proviso* enables the State Transport Commissioner to *"formulate any new route, if required to do so in public need..."*. Clause (6) says that the

route permits are to be allotted as per the procedure laid down under Rule 128 of the Punjab Motor Vehicles Rules, 1989. Its Clause (7) 'repeals' the 2007 Scheme notified on November 14, 2008. Schedule 'A' contains a long list of 'monopoly routes' while Schedule 'D' enlists 'indicative routes'.

(120) The short question that falls for consideration is whether the 2010 Mini Bus Scheme is invalid and vitiated by any legal flaw?

(121) Having heard Mr. Rajinder Sharma, counsel for the petitioners, and learned Addl. AG on behalf of the respondents, we are satisfied that the Mini Bus Scheme is patently illegal, a colourable exercise of power to protect existing mini bus operators and it *ultra vires* Section 99 as also the legislative policy of 1988 Act. We say so for the reasons that firstly a Scheme under Section 99 can be formulated only in respect of those areas or routes which are to be exclusively or partially run and operated by STUs. It is the admitted fact and has not been denied by the respondents that none of the STUs in the State of Punjab own mini buses and are not in a position to operate even on a single route included under the 2010 Scheme. Secondly, none of the STUs sent any proposal nor their opinion was sought by the State Government before formulating the Scheme regarding operation of mini buses by STUs to the complete or partial exclusion of private operators. Where is the question of providing efficient, adequate or economical road transport service to the passenger public when the STUs possess neither mini buses nor have expressed their willingness to run and operate on the identified routes? Thirdly, even after the two years of the Scheme coming into operation, no permit has been granted to any STU for any indicative or monopoly route. However, the private mini bus operators whose operations have been 'protected' are undoubtedly thriving upon their monopoly on such routes. Fourthly, the very coining of phrase "Mini Bus" is alien to the legislative scheme of 1988 Act which either defines "Heavy Passenger Motor Vehicle" [Section 2(17)], "Medium Passenger Motor Vehicle" [Section 2(24)] or, "Light Motor Vehicle" [Section 2(21)] besides "Maxicab", "Motorcab", "Motor Vehicle" and "Omnibus". The definition of word "Mini Bus" given in the Scheme is not in conformity with any of these expressions. Fifthly, the Scheme talks of 'future' mini bus operations by the STUs when nothing is being operated *in preasentia*. There can be no Scheme for uncertain future operations alone.

(122) There should be no traces of doubt that the oblique object for which the Scheme appears to have been formulated is to shelter the mini bus private operators to run and operate on the indicative or monopoly routes to the exclusion of their competitors. We draw such an inference firstly from the tone and tenor of the Scheme itself. Secondly, first *proviso* to its Clause (5) expressly allows the existing mini bus permit holders 'to operate their buses on the same terms and conditions' as they were operating prior to this Scheme. What does it mean? Does it not include the mini bus permit holders to whom permits were granted under Clause (8)(ii) of the Scheme notified on August 9, 1990 and which was held illegal in ***Amarjit Singh's*** case or those who got permits issued in their favour under Clause (7-A) added in the modified Scheme dated October 21, 1997 but was struck down by the Hon'ble Supreme Court in ***Jagdip Singh*** and ***Subhash Chander & Anr.*** cases? Similarly, does this Clause not include mini bus permits granted under the Mini Bus Scheme of 2007 which was declared to have lapsed by this Court in ***Gurdip Kaur's*** case (supra)? A conjunctive reading of different Clauses of the Scheme in seriatim lifts the veil yielding its pitched object of legalising the illegal mini bus permits and then allowing them to operate perpetually. Thirdly, Clause (5) of this Scheme unduly tilts in favour of private mini bus operators as it gives them 80% share as compared to the 20% of the STUs in all future operations on the indicative routes. Fourthly, the Scheme is inoperational so far as the STUs are concerned as none of the monopoly routes included in Schedule 'A' is operated by them for they do not have any mini bus[es]. So is the fate of indicative routes.

(123) The respondents' pleas that mini buses are also stage carriage permits of smaller sizes or that the 2010 Mini Bus Scheme is supplemental to the main Scheme of 1990 as modified on December 20, 2011 are totally vague and self-contradictory. If there already is a Scheme in relation to the Stage Carriage Permits, where is the occasion to supplement it with another Scheme relating to such vehicles which are not even owned by the STUs? Drawing support from the decisions in ***Jagdip Singh*** and ***Subhash Chander & Anr.*** cases and a string of other decisions cited earlier that a Scheme under Section 99 can be formulated only for taking over exclusive or partial operations of road transport services by the State Transport Undertakings, we hold that the impugned Punjab Mini Bus Service Scheme, 2010 neither

serves the four-pronged purpose contemplated by Section 99 nor does it conform to the object of the 1988 Act and is consequently struck down in entirety. All the permits issued or renewed under Clause (8)(ii) of the Scheme dated August 9, 1990, under Clause (7-A) of the Scheme as modified on October 21, 1997, under the Punjab Mini Bus Services Scheme, 2007 which lapsed on November 14, 2008 as well as those issued under the 2010 Scheme, are hereby declared illegal, null and void. All those areas or routes for which these illegal mini bus permits were issued or renewed shall be thrown open under Chapter-V of the 1988 Act save as not included in a validly formulated Scheme notified under Sections 99 & 100 of Chapter-VI of the 1988 Act.

State of Haryana Schemes published on September 14, 1993; June 18, 1998; January 1, 2001; May 3, 2011; now followed by a draft Scheme proposed under Section 99 of the 1988 Act and notified on October 1, 2012:

(124) There are seven cases pertaining to one or the other Scheme published by State of Haryana in purported exercise of its powers under Section 99 of the 1988 Act. While in CWP Nos. 14639 & 17643 of 1998 and 6122 of 2000, the petitioner(s) have impugned the approved Scheme dated June 18, 1998 besides seeking a mandamus to issue permits to them in accordance with Chapter-V of the Act, the petitioner in CWP No. 9853 of 2006 seeks quashing of the Scheme dated November 3, 1993 as well as a direction for issuance of route permit under Section 80 of the 1988 Act. LPA Nos. 1428, 1429 & 1432 of 2012 have been preferred by State of Haryana against the order dated June 28, 2010 passed by a learned Single Judge holding that there was no valid Scheme operating in the State of Haryana which excludes the right of permit holders to seek either extension or additional permits hence the refusal to grant extension or additional permits to the respondent-private operators is indefensible.

(125) Since the principal issue involved in these cases is, whether there exists a Scheme validly formulated under Section 99 by the State of Haryana to the complete or partial exclusion of private operators, we propose to decide these cases by passing a common order.

(126) The State of Haryana had notified various Schemes under the 1939 Act, the last being on October 26, 1972. Those previous Schemes need not be discussed for the reason that after enactment of the 1988 Act

a new Scheme was published in the Government Gazette on November 3, 1993, in supersession of all the previous Schemes, taking over the area or routes mentioned in the annexure appended thereto for being run and operated by the STU, namely, Haryana Roadways. The Scheme was, however, to the partial exclusion of private operators who were offered permits on all intra-district routes not covering more than a total of 10 kms. on National/State Highways. The Scheme also contemplated to issue permits to the registered Cooperative Societies of unemployed youth having at least five members each and subject to other eligibility conditions.

(127) The bone of contention between the petitioners and the respondent-State is : whether or not the Scheme dated November 3, 1993, has been struck down by a Division Bench of this Court vide order dated January 11, 2005 passed in ***CWP No.6163 of 2004 (The Shiv Co-operative Transport Society Ltd. vs. The State Transport Controller, Haryana & Ors.).*** While the petitioners asserted that the Scheme stands quashed by necessary implication, the respondents stoutly controverted such claim.

(128) The facts of the cited case may be briefly noticed with a view to resolve the issue. The petitioner – a Co-operative Society, challenged the permission granted to the STU (Haryana Roadways) on a route for which the Society had been issued permit. Reliance was placed on Clause (2) of the Scheme dated November 3, 1993 whereunder all intra-district routes were to be offered for private operations and Haryana Roadways buses were not to ply on such routes. The official respondents denied the claim of the petitioner-Society and contended that Clause (2) of the Scheme was not enforceable in law as Section 99 does not authorize State Government for "*carving out an exclusive route for a transport agency other than a State owned transport service...*". The Division Bench on consideration of the contention held as follows:-

> *"We find merit in the contention of the learned counsel for the respondents. A close/minute perusal of Section 99 of the MV Act reveals that the determination at the hands of the State Government under Section 99(1) of the MV Act is limited to providing exclusive routes to a State transport agency. No such power has been vested in the State Government, under Section*

99 of the MV Act or under any other provision thereof, to carve out exclusive routes for any private transport agency i.e. other than a State Transport Undertaking."

(129) The Bench then concluded as follows:-

"Since the clause sought to be invoked by the learned counsel for the petitioner while relying on the notification dated 3.11.1993, is not enforceable in law; as it does not flow from the power vested in the State Government under Section 99 of the MV Act or any other provision thereof, it is not possible for us to accept the aforesaid contention."

(130) It may be seen that the Scheme dated November 3, 1993 or its Clause(s) were not expressly challenged before this Court in ***The Shiv Co-operative Transport Society Ltd.*** case. The Bench, however, considered the legality of Clause (2) of the Scheme and having found it in conflict with the power conferred upon the State Government under Section 99 of the 1988 Act, declined to enforce the said illegal provision. While the petitioners are thus wrong in contending that the entire Scheme dated November 3, 1993 stood quashed by implication, the insistence of the respondents that the Scheme remained unruffled is equally incorrect. The Division Bench order is declaratory in nature and it held Clause (2) of the Scheme illegal which could not be enforced. The declaratory orders of a Court are equally binding save as right to appeal, if so available, or a lawful enactment legislated to cure the defect found by the Court. The categorical finding in ***The Shiv Co-operative Transport Society Ltd.*** case that Clause (2) of Scheme dated November 3, 1993 was illegal, renders the said Clause inoperative and ineffective even if it was retained in the Statute Book. Such a declaratory law ordinarily has retroactive effect as the declaration will relate back to the date when the illegality was committed. Clause (2) of the Scheme was thus unlawful from the very inception and continued to be so before and after the formal declaration made by this Court in ***The Shiv Cooperative Transport Society Ltd.*** case. Since the validity of the entire Scheme dated November 3, 1993 was not considered or commented upon by this Court in the cited decision and Clause (2) could be segregated without affecting other clauses of the Scheme, only the offending Clause is held to have been struck down by necessary implication. The remaining Clauses of the Scheme were unaffected.

(131) The State of Haryana thereafter came up with another Scheme notified on June 18, 1998 after following the procedure prescribed in Section 100 of the 1988 Act. We may skip the contents of the said Scheme for the reason that the State of Haryana vide Notification dated February 25, 2000 rescinded the said approved Scheme dated June 18, 1998.

(132) Soon thereafter, the Haryana State notified another Scheme on January 19, 2001 known as 'Private Bus Service Scheme' whereby it invited bids for non-notified routes, for allocation of such routes to the highest bidder. The Scheme was challenged in a bunch of writ petitions before this Court essentially on the ground that inviting bids for non-notified routes was impermissible under the 1988 Act. The afore-stated plea found favour with a learned Single Judge of this Court who vide order dated December 2, 2008 quashed the 2001 Scheme in ***CWP No.17112 of 2002 (The Shivani Adarsh Cooperative Transport Society Ltd. vs. State of Haryana & Ors.)*** affirmed in ***LPA No.93 of 2009*** titled as ***Sadhu Ram through Rajesh Kumar Vs. State of Haryana and others decided on February 10, 2010.***

(133) Pending consideration of the writ petitions challenging 2001 Scheme, the State of Haryana proposed another Scheme in the year 2003 which was also withdrawn. Yet another proposed Scheme was notified on March 11, 2010. When the objections were being invited, some amendments in the proposed Scheme were carried out on May 4, 2010. The final approved Scheme was then notified on May 3, 2011. The said Scheme was also impugned before this Court on the ground that the final approved Scheme ought to have been published within one year from the date when its proposal was notified on March 11, 2010. The State of Haryana insisted that the period of one year is to be counted from the date of amendment in the proposed Scheme published on May 4, 2010. A Full Bench of this Court in ***CWP No.9421 of 2011 (The Rania Bratch Cooperative Transport Society Ltd. & Ors. vs. State of Haryana & Ors.) decided on April 3, 2012*** held that the Scheme dated May 3, 2011 had lapsed and the same was accordingly set aside. State Government was permitted to notify a fresh draft Scheme in accordance with Section 99 of the 1988 Act and grant temporary permits meanwhile.

(134) The question is whether on these withdrawals, lapses or quashing of Scheme(s) issued relentlessly without even analyzing the import or true meaning of Section 99, is there any Scheme formulated by State of Haryana which still survives and holds the field? The above sequence of events narrate their own story. The Schemes of 1998, 2001, 2003 or 2011 admittedly do not survive. Learned State Counsel, however, vehemently submitted that once the subsequent Schemes are invalidated, the 1993 Scheme stands automatically revived but the petitioners in opposition relied upon ***The Shiv Cooperative Transport Society Ltd.*** case to urge that the 1993 Scheme is also non-existent. In view of our conclusion drawn in para 130 where we have held that only Clause (2) of the Scheme dated November 3, 1993 stood annulled, we further hold that as a consequence thereto, Clause (3) of the Scheme regarding determination of routes to be offered to private operators or Clause (4) prescribing eligibility conditions for registered cooperative societies to apply for the routes to be offered for private operation, have also been rendered redundant. Similarly, Clause (5) prescribing specification of the buses to be operated by private operators or their obligations specified in Clause (6) also became irrelevant. Clause (7) too became ineffective as no passenger tax could be charged from private operators if they were not to be issued any permit. The resultant effect is that only Clause (1) of the Scheme was validly formulated in consonance with Section 99 and it has survived, whereunder the road transport services in relation to the 'areas' and 'routes' mentioned in the annexure appended to the Scheme are to be operated by the State Transport Undertaking to the complete exclusion of private operators. The second consequential effect is that the permits, if any, issued under Clause (2) which was illegal from the very beginning, also became unlawful. None of those permits can be renewed further or saved under a future Scheme. In fact, rest of the Scheme cannot be enforced by either of the parties. The other consequence but for the reason stated hereinafter, would have been to declare that the 'area' or 'routes' which are not notified under the annexure appended to the Scheme dated November 3, 1993 are non-nationalised and the permits in relation thereto ought to be issued in accordance with Chapter-V of the 1988 Act.

(135) The State of Haryana, however, has meanwhile vide Notification dated October 1, 2012 published a proposed Scheme inviting objections under Section 100 of the 1988 Act. As a result thereto, no permit

under Chapter-V can be granted to an operator as no sooner a Scheme is proposed and published than only the temporary permit can be granted under Section 99(2) of the Act. Strangely, we find from the first *proviso* to Clause (3) of the proposed Scheme that an attempt is still being made to protect the 'existing permit holders' of 1993 & 2001 Schemes. The said *proviso* is not only *prima facie* derogatory to the Court decisions declaring the relevant Clause/Scheme illegal but also tends to protect arbitrarily a class of illegal permit holders. We are, however, sanguine that the final Scheme shall not defeat the "rights of common man against the lawless instinct of men in power". It is therefore directed that if the State Government decides to finally approve and notify a Scheme under Section 99, it shall have to ensure that each Clause of the Scheme is consistent and in conformity with the law of the land which we have attempted to explain elaborately. It is made clear that irrespective of the tenure or nature mentioned in the permits issued to private operators under Clause (2) of 1993 Scheme or under the 2001 Scheme, all such permits are illegal though in the interest of travelling public it is directed that the same shall be treated as temporary permits till the date of finalization of the proposed Scheme.

Conclusions:

(136) To sum up the discussion on different issues formulated by us, we hold as follows:-

i. So long as a Scheme formulated under Section 99 of 1988 Act is operative, no Stage Carriage Permit can be issued under Chapter-V of the 1988 Act;

ii. If the Scheme notified under Section 99 is to the partial exclusion of private operators, the Stage Carriage Permits to the private operators to the extent of their permissibility are to be granted in accordance with the Scheme only and not under Chapter-V of the 1988 Act;

iii. The Scheme formulated by State of Punjab on August 9, 1990 along with subsequent modifications made on October 21, 1997 and December 20, 2011 is a Scheme to the partial exclusion of private operators and since it covers every route in the State of Punjab no area or route can be held to be non-nationalised route to be thrown open under Chapter-V of 1988 Act;

iv. In view of the findings returned in paragraph 90 of this order, the second proviso to Clause (3) of the Scheme as modified on December 20, 2011, having been found contrary to the legislative object of Section 99 of the 1988 Act, is hereby struck down;

v. For the reasons assigned in paragraph 106 of this order, *proviso* to Clause (10) of the Scheme modified on December 20, 2011 empowering extension of operation of existing permits to an unlimited extent, is hereby struck down;

vi. In view of what has been held or observed in paragraphs 95 & 96 of this order, those Stage Carriage Permits which were granted under Clause (2) of the original Scheme dated August 9, 1990 or under third *proviso* to Clause (2) or under Clause (7-A) of the Scheme modified on October 21, 1997, namely, the provisions which were struck down by this Court or by the Hon'ble Supreme Court expressly or by implication, are hereby declared illegal and set aside. These illegal permits shall not be renewed or re-validated under the Scheme modified on December 20, 2011;

vii. For the reasons given in paragraphs 96 & 104 of this order, it is directed that the phrase "all existing operations" in Clause (8) & (9) of the Scheme dated December 20, 2011 shall not include the permits issued under those Clauses of the original or the Scheme as modified on October 21, 1997 which stand declared illegal by this Court in ***Sirhind Bus Service*** and ***Maharaja Travels*** or by the Hon'ble Supreme Court in ***Jagdip Singh's*** case;

viii. For the reasons given in paragraph 80 of this order, Rule 128 of the Punjab Motor Vehicles Rules, 1989 does not suffer from any legal infirmity;

ix. In view of our findings in paragraphs 99 to 103 of this order, Section 217-A of the 1988 Act is retroactive in nature;

x. Resultantly, the writ petitions as per their details given in para 2(i) to (iv) of this order are disposed of in above terms, leaving it open for the petitioners to seek consequential relief(s) before an appropriate forum, if so permissible as per this order;

xi. For the reasons given in paragraphs 115 to 123 of this order, the Punjab Mini Bus Service Scheme, 2010 is hereby quashed and mini bus permits issued or renewed illegally, as per the details given in para 123 of this order, are hereby declared illegal, null and void. Consequently, the writ petitions mentioned in para 2(v) of this order are allowed in the above-stated terms;

xii. In view of the conclusions drawn in paragraphs 124 to 130 of this order, it is held that the Scheme dated November 3, 1993 formulated by Government of Haryana along with its Clause (1) alone survives and is still operative, however, its Clause (2) stood struck down by necessary implication whereas Clauses (3) to (7) became redundant after omission of Clause (2) from the Scheme and CWP No.9853 of 2006 is disposed of accordingly;

xiii. For the reasons mentioned in paragraph 134 of this order, we declare that the Stage Carriage Permits issued to private operators under Clause (2) of State of Haryana Scheme dated November 3, 1993 are also illegal and cannot be validated or renewed under a subsequent Scheme. These permits, however, are directed to be treated as temporary permits till the finalization of the proposed Scheme notified on October 1, 2012 or till September 30, 2013, whichever is earlier;

xiv. The CWP Nos.14639, 17643 of 1998 and 6122 of 2000 challenging Scheme dated June 18, 1998 are disposed of as having been rendered infructuous;

xv. The findings by learned Single Judge in LPA Nos.1428, 1429 and 1432 of 2012 that 'there exist no Scheme in State of Haryana' thus cannot be approved, hence the appeals preferred by the State of Haryana are hereby allowed in part and the order passed by the learned Single Judge in directing to issue, extend or renew permits under Chapter-V, is set aside. In case a private operator has been granted additional route permit or the permit has been altered, the same shall also be treated as temporary permit for all intents and purposes.

(137) ***Dasti.***

J.S.Mehndiratta