[2016] 8 S.C.R. 1

G.T. VENKATASWAMY REDDY A

v.

STATE TRANSPORT AUTHORITY & ORS.

(Civil Appeal No. 4480 of 1998)

JULY 19, 2016 B

[T.S. THAKUR, CJI, FAKKIR MOHAMED IBRAHIM KALIFULLA, S.A. BOBDE, R. BANUMATHI AND UDAY UMESH LALIT, JJ.]

Motor Vehicles Act, 1939: ss.48, 57(8), 63 – Whether on the publication of an approved scheme the number of trips of the C *vehicles of the existing operators can be increased by granting the variation of a permit even when the existing operators are allowed to carry on their business as on the date of the publication of the scheme – Held: A close reading of the sub-section (8) of s.57 shows that an application for variation of any permit in the case of a* D *stage carriage, for the purpose of increasing the number of trips as well as number of vehicles covered by the permit, mandatorily to be treated as an application for the grant of a new permit – s.57(8) is controlled by s.68FF falling under Chapter IV-A, by virtue of the superseding effect of s.68B also falling under Chapter IVA – Once a scheme formulated under s.68D gets approved, then all the permits* E *in the route/area covered by the scheme get frozen by virtue of operation of s.68FF – The effect of s.68FF can be altered /modified/ cancelled only in the manner as provided for under s.68E and in no other manner – By virtue of that, either a grant of a new permit or the variation of an existing permit of private operator cannot be* F *ordered in respect of an area or route covered by an Approved Scheme – Increase in the number of trips or vehicles which were being run under the existing exempted permit under a Scheme will amount to grant of a new permit to operate one more Stage Carriage which is not permissible under s.68FF.*

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s.57 – Application for variation of permit – Requirement for its grant – Held: A conspectus consideration of sub-sections (1) to (5) and (7) along with sub-section (8) of s.57 shows that an application for variation when treated as an application for the grant of a new permit, all the mandatory requirements which are to

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be followed for the grant of a new permit have to be followed in letter and spirit even with reference to an application for increasing the trips as well as for increasing the number of vehicles.

Answering the reference, the Court

HELD: 1.1 A close reading of the sub-section (8) of section 57 shows that an application for variation of any permit in the case of a stage carriage, for the purpose of increasing the number of trips as well as number of vehicles covered by the permit, mandatorily to be treated as an application for the grant of a new permit. A close reading of sub-sections (1) to (7) demonstrate how such provisions mandates compliance of various specific requirements, which are intricately connected, with the grant of a new permit, which are to be 'mutatis mutandis' to be complied with even in respect of an application for variation, which is governed by sub-section (8). It is not as if such procedures prescribed in sub-sections (1) to (7) barring sub-section (6) are to be followed casually and that the same would ultimately result in grant of variation irrespective of compliance or non-compliance of such rigorous procedures. If the prescription of the time limit, specified in sub-section (2) is not complied with, it may result in instantaneous invalidation of the application at the very threshold. Similarly, if the Regional Transport Authority failed to follow the statutory prescription in the matter of publication of such an application, by following the time limit and the other prescribed procedure under the Rules, then again, the consideration of the application itself may not take place until such prescriptions are meticulously followed and complied with. Then again, under sub-section (4) anyone who wants to make a representation as against the grant of variation will have to strictly follow the time limit viz., filing of such representation before the appointed date as notified by the Regional Transport Authority and that while filing such representation, it must be ensured that simultaneously a copy was served on the applicant, failure to follow such prescription will automatically result in rejection of the right of hearing or right of consideration of any such representation with reference to the application for variation. [Paras 38, 39][27-B-D; 28-F-H; 29-A-B]

2. The requirement of giving a public hearing coupled with

requirement of personal hearing to the applicant as well as the person making the representation is yet another prescription which again shows that very serious consideration should be given to the application for variation in as much as it will have very serious impact on the operation of the vehicle in the route in question in the event of such variation being granted, anyone living in that area can voice his grievance or support before the Regional Transport Authority in such a public hearing. [Para 40][29-C-D]

R.Raghuram v. P. Jayarama Naidu and others **1990 (Supp) SCC 361 – affirmed.**

Karnataka State Road Transport Corporation, Bangalore v. B.A.Jayaram and others **1984 (Supp) SCC 244 : 1984 SCR 768 – overruled.**

3. Section 68-B of the Act which falls under Chapter IV-A states that all the provisions contained in Chapter IV-A shall have supervening effects on any inconsistent provisions contained in Chapter IV or any other law for the time being in force or in any instrument having effect by virtue of any such law. Under Chapter IV Sections 42 to 68 of the Act have been listed. In so far as, Section 57(8) of the Act is concerned, there will be no inconsistency with any of the provisions contained in Chapter IV-A. The said Section 57 will apply in all force even in respect of the prescription contained in the provisions under Chapter IV-A viz., Section 68A to 68I of the Act. [Para 43][30-D-E]

4. The formulation of a scheme is to be prepared and published by a State Transport Undertaking in respect of the services to be provided in any area or route to be covered. The underlying object for such formulation of a scheme for its preparation and publication, must be for providing an EFFICIENT, ADEQUATE, ECONOMICAL and PROPERLY coordinated road transport service with the paramount consideration of public interest and such scheme should be prepared and published. Once such a scheme is formulated with the above avowed objects in mind and is notified, under Section 68D, every person who is already providing transport facility in that area or route or any association representing persons interested in the provision of

A road transport facilities recognized by the State as well as the local authority or police authority who are also located in that area or route, will be entitled to raise their objections or their representations within 30 days from the date of publication to the State Government. Under sub-section (2) of Section 68D of the Act, the State Government after considering the objections and after giving an opportunity of hearing to the objector or his representative as well as the representatives of the State Transport Undertakings can either approve the scheme as proposed or give a modified scheme. Under Section 68E of the Act, the scheme can be cancelled in the form in which it was approved or can be modified by following the very same procedure prescribed under sub-sections 68C and 68D of the Act. However, the State Transport Undertaking with the previous approval of the State Government can modify the scheme without following the procedure laid down in Section 68C and 68D of the Act under the proviso to Section 68E. That apart under sub-section (2) of Section 68E of the Act, the State Government is fully empowered to modify any scheme published under sub-section (3) of Section 68D of the Act after giving an opportunity of hearing to the State Transport Undertaking, as well as, to any other person who in the opinion of the State Government is likely to be affected by the proposed modification. Once the approved scheme comes into effect, under Section 68F of the Act, the State Transport Undertakings can be issued with the required permits. [Paras 44, 45][30-F-H; 31-A-B, C-F]

5. Section 68FF creates a restriction on grant of permits in respect of notified area or notified route. A close reading of the said provision discloses that where an approved scheme as stipulated under Section 68D(3) of the Act in respect of an area or a route is published, then, it prohibits grant of any permit except in accordance with the provisions of this scheme. The substantive part of Section 68FF therefore makes it clear that once the approved scheme comes into play, then, there will not be any scope for grant of any permit in that area or the route covered by the scheme, except what is specifically permitted or provided under that scheme itself. By way of an analogy, it can be stated that where, under the scheme while the State Transport

Undertaking alone is exclusively permitted to operate the service in any particular area or route and even while providing for such exclusive operation by State Transport Undertaking, if the operation by any existing permit holder is saved either fully or partially that as rightly stated in *'RAGHURAM'* and *'EGAPPAN'*, such operation by other private operators gets frozen and while interpreting Section 57 (8) of the Act that application for variation will be nothing but an application for grant of a new permit. Therefore, even in respect of protected operation under the scheme of any existing operator, as on the date of the approved scheme, he will have to restrict his operations to the extent to which he was permitted as on that date and the manner in which such operation was permitted and not beyond. Once things get frozen, the frozen stage can be changed only by way of a permitted process. Here, when by virtue of Section 68FF of the Act, the permit stood frozen, as on the date the scheme was published, then, if the said frozen stage is to be altered or modified, the provision by which such modification or alteration can be effected can be only by applying Section 68E, which is the legally permissible manner in which such frozen stage can be altered or modified. Any other manner in which the said frozen stage is sought to be altered or modified, that is totally prohibited under the statutory provisions. Therefore, if under the scheme, if the permit gets frozen, within the prescriptions contained under the scheme and if a variation is to be considered for that permit either by way of increase in the number of trips or addition of vehicle without any modification or alteration effected under Section 68E of the Act, it will be wholly prohibited under the provisions falling under Chapter IV-A and consequently, such variation applied for can never even be considered by any of the authorities. That will be the consequential effect of the application of Section 68FF of the Act and other relevant provisions falling under Chapter IV-A. Any other interpretation would run contrary to the prescription contained in Chapter IV-A of the Motor Vehicles Act. [Paras 46, 47][31-G-H; 32-A-C, D-G]

6. The legal propositions are:

Chapter IV-A supersedes any inconsistent provisions in Chapter IV. The policy of the Legislature is clear from Section

A **68C that the State Transport Undertaking may initiate a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the State Transport Undertaking in relation to any area or route or portion thereof. It may do so if it is necessary in the public interest. Grant of variation under Section 57(8) will be as good as grant of a new permit. Section 57(8) is controlled by Section 68FF falling under Chapter IV-A, by virtue of the superseding effect of Section 68B also falling under Chapter IVA. Once a scheme formulated under Section 68D gets approved under 68D(3) of Chapter IVA, then all the permits in the route / area covered by the scheme will get frozen by virtue of operation of Section 68FF. The effect of Section 68FF can be altered / modified / cancelled only in the manner as provided for under Section 68E and in no other manner. By virtue of the above, either a grant of a new permit or the variation of an existing permit of private operator cannot be ordered in respect of an area or route covered by an Approved Scheme. Increase in the number of trips or vehicles which were being run under the existing exempted permit under a Scheme will amount to grant of a new permit to operate one more Stage Carriage which is not permissible under Section 68FF. The proposition of law, laid down by this Court in *'JAYARAM'* impliedly stood overruled in *'ADARSH TRAVELS'*. The economy and coordination, two of the factors, which govern the Approved Scheme, will be seriously infringed if the variation is to be granted of the existing permit condition. Even if there is an interstate agreement under Section 63 of the Act for increasing the number of trips, such an agreement cannot override the provisions of Chapter IV-A by virtue of Section 68B of the Act. Section 63 being in Chapter IV of the Act, the Scheme approved under Chapter IV-A will prevail over it. The Approved Scheme will exclude the operation of other stage carriage services on the Route / Area covered by the Scheme, except those whose names are mentioned in the Scheme and to the extent to which such exception is allowed. The provisions in Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are clear and complete regarding the manner and effect of the "takeover" of the operation of a road transport**

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service by the State Transport Undertaking in relation to any Area or Route or portion thereof *(ADARSH TRAVELS)*. A necessary consequence of those provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorized so to do by the term of the scheme itself. He may not operate on any part or portion of the notified Route or Area on the mere ground that the permit as originally granted to him covered the notified Route or Area *(ADARSH TRAVELS)*. [Para 50][33-E-II; 34-A-H; 35-A-C]

Pandiyan Roadways Corporation Ltd. v. M.A.Egappan **1987 (2) SCC 47 : 1987 (2) SCR 391;** *Adarsh Travels Bus Service and another v. State of U.P. and others* **(1985) 4 SCC 557– approved.**

Karnataka State Road Transport Corporation, Bangalore v. Karnataka State Transport Authority, Bangalore and others **1987 (Supp) SCC 648 – referred to.**

Case Law Reference

1990 (Supp) SCC 361	**affirmed**	**Para 1**
1984 SCR 768	**overruled**	**Para 4**
1987 (2) SCR 391	**approved**	**Para 4**
(1985) 4 SCC 557	**approved**	**Para 4**
1987 (Supp) SCC 648	**referred to**	**Para 4**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4480 of 1998.

From the Judgment and Order dated 23.02.1998 of the High Court of Judicature at Madras in C.R.P. No. 553 of 1988

WITH

C. A. No. 4481 of 1998, C. A. Nos. 7195-7197 of 2001, C. A. Nos. 2782, 7299 of 2002, C. A. Nos.3605, 3606, 3633, 3731-3733, 3853 of 2003, SLP (C) Nos. 22621-22622 of 2015.

K. K. Venugopal, Ms. Kiran Suri, A. Mariarputham, Amit Singh Chaddha, Thomas P. Joseph, Raju Rammachandran, Sr. Advs., R. Venkataramani, AAG, N. D. B. Raju, M. E. Nagesh, Rohit Bhat, Guntur Prabhakar, S. J. Amith, Gautam Kumar, Dr. (Mrs.) Vipin Gupta,

A M. Palani, Ms. Aruna Mathur, Avneesh Arputham, Yusuf Khan, Ms. Anuradha Arputham, M/s. Arputham Aruna & Co., Balaji Srinivasan, Ms. Vaishnavi Subrahmanyam, Ms. Srishti Govil, Dilpreet Singh, Mayank Kshirsagar, Ms. Pratiksha Mishra, Arunava Mukherjee, M. Gireesh Kumar, Sriram P., Ankur S. Kukarni, Vijay Kumar, Jayanth Muth Raj,
B Ms. Malavika J., Sureshan P., Arunava Mukher, N. D. B. Raju, N. Ganpathy, M. E. Nagesh, B. Balaji, Muthuvel Palani, Vikram Aditya Narayan, Ms. M. Vijay Kumar T., Venkateshwar Rao Anumolu, Goli Rama Krishna, Shashwat Goel, J. N. Singh, G. Ramakrishna Prasad, R. Ayyam Perumal, A. V. Rangam, Ms. D. Bharathi Reddy, K. V. Mohan, R. S. Hegde, Ms. Farhat Jahan Rehmani, Shanti Prakash, Rajeev Singh,
C V. N. Raghupathy, Advs. for the appearing parties.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This reference to this Constitution Bench was made by a Division Bench of
D this Court in their order dated 22.07.2003 made in the case of **R. Raghuram Vs. P. Jayarama Naidu and others** reported in **1990 (Supp) SCC 361**, which reference though was initially made to a Three Judges Bench, was subsequently referred to the Constitution Bench by the Three Judges Bench led by the Honourable The Chief Justice of India vide order dated 01.12.2004. As the issues raised and argued
E before us were common, on the question referred, we heard arguments in common.

2. We heard the arguments of Mr. K.K. Venugopal, learned senior counsel for the appellant in the C.A.No.3606/2003, Ms. Kiran Suri, learned senior counsel for the appellant in C.A.No.4480/1998, Mr. A.
F Mariarputham, learned senior counsel for the appellant in C.A.Nos.7195-7197/2001, Mr. Amit Singh Chaddha, learned senior counsel for the appellant in C.A.3853/2003 and Mr. Raju Rammachandran, learned senior counsel for the respondent(s) in C.A.No.4480/1998.

G 3. Mr. K.K. Venugopal, learned senior counsel made his leading submissions, followed by Ms.Suri and Mr. Chaddha as well as Mr. Mariarputham, learned senior counsels for the appellants, while Mr. Raju Ramachandran, learned senior counsel addressed arguments on behalf of the respondents in these appeals.

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4. Mr. K. K. Venugopal, learned senior counsel for the appellant in C.A.3606 of 2003 made a brief reference to the order dated 22.07.2003, by which the present reference came to be made to the Constitution Bench and the subsequent order dated 01.12.2004 as well. Learned senior counsel in his submissions, fairly pointed out that the issue concerned in this reference has to be considered by referring to the decisions reported in ***Karnataka State Road Transport Corporation, Bangalore Vs. B.A.Jayaram and others - 1984 (Supp) SCC 244*** (hereinafter referred to as **'JAYARAM'**), ***Pandiyan Roadways Corporation Ltd. Vs. M.A.Egappan - 1987 (2) SCC 47*** (hereinafter referred to as **'EGAPPAN'**), ***Adarsh Travels Bus Service and another Vs. State of U.P. and others – (1985) 4 SCC 557*** (hereinafter referred to as **'ADARSH TRAVELS'**), ***Karnataka State Road Transport Corporation, Bangalore Vs. Karnataka State Transport Authority, Bangalore and others -1987 (Supp) SCC 648*** (hereinafter referred to as **'KSRTC'**) and ***R.Raghuram (supra)*** (hereinafter referred to as **'RAGHURAM'**).

5. The learned senior counsel made a detailed reference to the list of dates commencing from 1963-64 when the initial permit in the case of appellant in C.A.3606 of 2003 viz., permit No.13/63-64 for the Route Bangalore to Hosur via., Madivala, Chandapura, Anekal, Thali, Denkanikottah and Keelamangalam came to be issued, which permit was originally granted in favour of one Mr. C. Rajasekaran and subsequently transferred to Smt. G. Kavitha Gopinath on 12.03.1998 and even thereafter transferred in favour of the present appellant Smt. A.M. Kalaivani Ammal. The learned senior counsel also referred to the application made by the appellant on 10.01.1985 to the State Transport Authority (STA), Bangalore for grant of four additional singles and one additional vehicle by the order dated 10.01.1985, the Authority granted two additional singles with inclusion of one additional vehicle. Thereafter by referring to the subsequent proceedings initiated at the instance of the appellant, the learned senior counsel referred to the order of the STAT, Madras as well as that of the order of the learned Single Judge in C.R.P.No.553 of 1988 and the order of the Division Bench in W.A.No.750 and 780 of 2002 dated 23.03.2002 pursuant to which the present appeal came to be filed.

6. The learned senior counsel referred to Section 48(3)(xxi), Section 57(8) and Section 63 of the Motor Vehicles Act, 1939 (hereinafter

A referred to as "the Act"), which pertain to the statutory prescriptions concerning grant of variation as well as the requirement for the counter signature respectively. The learned senior counsel also fairly referred to the provisions viz., Sections 68A, 68B, 68FF falling under Chapter IV-A of the Act while making his submissions.

B 7. The learned senior counsel while formulating his submissions, contended that the reference itself was based on incorrect provisions because, there is no conflict or inconsistency between *'JAYARAM'* and *'EGAPPAN'* since the existing permit in *'JAYARAM'* was an exempted one on the Nationalized Route and variation of that permit by added singles and additional bus was an issue, while in *'EGAPPAN'*, the C operator was not one of the persons exempted under the Nationalized scheme and on the other hand he was operating on a non-scheme route. The learned senior counsel then contended that *'ADARSH TRAVELS'* does not deal with Section 57(8) of the Act which concerns grant of variations, but dealt with the interpretation of an existing scheme and as D to whether an operator on that Route could operate with corridor restrictions. The learned senior counsel submitted that the ratio in *'ADARSH TRAVELS'* being that the condition of the Scheme would cover the rights of the operator and therefore the said case is not applicable to the case on hand. As far as the case in *'RAGHURAM'* is concerned, learned senior counsel submitted that the said case was not E of any consequence, because the review petitioner in that case wrongly proceeded on the basis as to what was included was an approved Scheme, while in fact it was only a draft scheme, which would attract different consequence.

8. Lastly, he contended that the judgment in *'JAYARAM'*, F *'RAGHURAM'* and *'KSRTC'* support the case of the appellant, which concerns grant of variation on a nationalized Route, that the appellant was operating from 1965 and the variation was granted in 1985 and, therefore, his operation should not be disturbed in public interest.

9. Ms. Suri, learned senior counsel for the appellant in G C.A.No.4480 of 1998, after referring to the list of dates rightly formulated the questions as under

(i) Whether variation is permissible in a notified scheme route? and

(ii) Whether the Tamil Nadu Act disentitles counter signature of

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interstate permit variation? A

10. The learned senior counsel after making reference to ***'EGAPPAN'*** judgment, submitted that the appellant's permit was covered by a draft scheme. As regards the alleged conflict between ***'JAYARAM'*** and ***'EGAPPAN'***, the learned senior counsel submitted that since the scheme was at the draft stage, the position was different. As far as the B implication of Section 68FF of the Act was concerned, the learned senior counsel submitted that the same would bar any grant of permit which would include variation by way of additional singles or additional vehicles.

11. Mr. Mariarputham, learned senior counsel for the appellant in C.A.Nos.7195-7197 of 2001, submitted that the question as regards the C implication by reason of the Tamil Nadu Act can be left open for consideration by the regular Bench since the question referred to the Constitution Bench does not cover the said issue.

12. Mr. Chaddha, learned senior counsel for the appellant in C.A.No.3853 of 2003 after making reference to the scheme concerning D the case of the appellant in that case, submitted that the said scheme does not cover the case, in as much as the argument is that any interstate agreement even entered subsequently, will stand excluded and by referring to the object of the scheme in the case of the said appellant and after referring to the relevant laws in the agreement, learned senior counsel sought to distinguish the case of the appellant. E

13. As against the above submissions, Mr. Raju Ramachandran, learned senior counsel for the respondent in C.A.4480 of 1998 submitted that Section 68B of the Act is the complete answer to the argument of the learned counsel for the appellant in C.A.3853 of 2003. The learned senior counsel further submitted that having regard to the implication of F the provisions contained in Chapter IV-A of the Act, the scheme is the law and if the scheme does not permit any variation, then the same would not be permissible.

14. Having heard learned senior counsel for the appellants and the learned senior counsel for the respondent, we proceed to answer the G reference as under.

15. By order dated 22.07.2003, the Division Bench of this Court after noting the reference made in the case of ***R.Raghuram (supra)*** to a Constitution Bench and on finding that later the matter was then referred

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A to a three Judge Bench, and subsequently before the three Judge Bench, the petition itself abated on account of the death of the petitioner in that case and since the conflict continued to remain in these cases, the matter was referred to a Bench of three Judges. Subsequently, when the above appeal along with the connected matters was listed before a three Judge Bench headed by the then Hon'ble The Chief Justice of India, by an order dated 01.12.2004, the said Bench again referred the case back for hearing before a Constitution Bench. That is how these appeals are listed before us.

16. When we refer to the order dated 22.07.2003, we find an apparent conflict in the view of the law taken in ***'JAYARAM'*** and ***'EGAPPAN'***. It was also noted therein that the Constitution Bench decision in ***'ADARSH TRAVELS'***, wherein, similar question came to be considered and decided was distinguished by a three Judge Bench of this Court in ***'KSRTC'***. The case which got abated was reported in ***'RAGHURAM'***. When we read the order dated 22.07.2003, which is the order by which initially the reference came to be made to a three Judge Bench which was subsequently referred to the Constitution Bench by the subsequent order dated 01.12.2004, except making a reference to the apparent conflict as between ***'JAYARAM'*** and ***'EGAPPAN'*** as well as the distinction in ***'ADARSH TRAVELS'*** made in ***'KSRTC'***, there was no specific terms of reference made in either of the two orders. However, when we refer to the case which got abated viz., ***'RAGHURAM'***, while dealing with an identical issue, this Court while referring the review to a Constitution Bench has specified the terms of reference which can be culled out and can be taken as the Terms of Reference and the same reads as under:

> *"Whether on the publication of an approved scheme, the number of trips of the vehicles of the existing operations can be increased both by number of trips and vehicles by granting the variation of a permit even when the existing operators are allowed to carry on their business as on the date of the publication of the scheme".*

A little later we will refer to the relevant provisions, which necessitated the said reference.

17. It is worthy to note that before formulating the said question

for reference to a Constitution Bench, the learned Judges culled out the *ratio decidendi* in the Constitution Bench decision of '***ADARSH TRAVELS***' and how the case in '***JAYARAM***' run counter to the said ratio and consequently, it was held that the ruling in '**JAYARAM**' was impliedly overruled in '***ADARSH TRAVELS***'.

18. Keeping the said perception which weighed with this Court in '***RAGHURAM***' to make a reference to the Constitution Bench, we can discern from the said order of reference that the conflict with reference to which the present reference came to be made by the orders dated 22.07.2003 and 01.12.2004 were in all fours covered by the reference made in '***RAGHURAM***' to the Constitution Bench. Therefore, though the said reference stood abated because of the demise of the appellant therein, the question of law referred to the Constitution Bench rightly survived and the said question requires to be answered in this reference.

19. In order to answer the above referred question, we have to make note of the principles which were noted in the judgments reported in '***JAYARAM' (supra)***, '***ADARSH TRAVELS' (supra)***, '***EGAPPAN' (supra) – 'KSRTC' (supra)*** and '***RAGHURAM' (supra)***, apart from the relevant provisions falling under Chapter IV and IV-A of the Act. We shall make a reference to the decisions in the forefront before making a reference to the Statutory provisions and thereafter analyze the question for consideration and render our decision.

20. Before doing so, at the very outset, we want to make it clear that we are not dealing with any individual facts involved in these appeals as we are not concerned with various intricated facts involved in the different appeals. After we answer the reference all the appeals will be listed before the regular Bench for disposal based on the answer to the question referred before us. With that prelude, we proceed to first analyze the decisions mentioned above.

21. '***JAYARAM' (supra)*** is the starting point for this controversy, in which the legal questions framed and the answer rendered can be set out. The question considered by the said two Judge Bench decision in '***JAYARAM***' has been formulated in paragraph 9 which reads as under:

> *"9. On the above rival contentions, two main questions arise for our consideration, namely,*
>
> *(1) Whether sub-section (8) of section 57 creates a legal*

A *fiction by reason of which the grant of an application for variation in the conditions of a permit in respect of a matter set out in that sub- section results in the grant of a new permit ?*

(2) Whether an increase in the number of trips or the
B *number of vehicles above the maximum specified in an existing inter-State stage carriage permit would be inconsistent with the provisions of the said Scheme ?"*

22. Before answering the above questions the learned Judges made a detailed reference to the various provisions contained in Chapter
C IV and IV-A of the Act. Thereafter, by making a particular reference to Section 57(8) of the Act, the learned Judges in their analyses observed as under in paragraph 15 :

"15. .....If the effect of sub-section (8) of section 57 were as contended for by the Appellant, that is, if
D *the said sub section (8) were to create a legal fiction by which an application for variation of the conditions of a permit of the nature referred to in that subsection is to be deemed to be an application for the grant of a new permit and such variation when granted would result in the grant of a new permit, then clearly by reason*
E *of the prohibition contained in section 68-FF, the granting of such application would be inconsistent with the provisions of the said Scheme and would not be permissible in law. Considerable emphasis were placed on behalf of the Appellant on the words "shall be treated*
F *as an application for the grant of a new permit" occurring in the said sub-section (8) and on the basis of this phraseology, it was submitted that an application for variation of a condition of a permit referred to in subsection (8) of section 57 was by a fiction of law put on the same footing as an application for the grant of a*
G *new permit and it, therefore, followed as a corollary that such an application if granted would result in the grant of a new permit."*

23. Thereafter, the learned Judges referred to sub-section 1 to 10 , of Section 57 of the Act in detail and then stated as under in paragraph 16:
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"16. .....Sub-section (8) comes immediately after sub- sections (3) to (7) and when read in the context of these sub-sections and in juxtaposition with them, it is clear that the legislative intent in enacting that subsection was to prescribe the procedure to be followed when an application for variation of the conditions of a permit referred to in that sub-section is made, this procedure being the same as is laid down in sub sections (3) to (7) with respect to an application for a new stage carriage permit or a new public carrier's permit. It is for the purpose of providing that the procedure to be followed in the case of an application made under sub-section (8) is to be the same as the procedure to be followed in the case of an application for a new permit that sub-section (8) uses the words "shall be treated as an application for the grant of a new permit." By the use of these words what sub-section (8) does is to incorporate in it the provisions of sub- sections(3) to (7). This is a very different thing from enacting a legal fiction....." (Underlining is ours)

24. While stating the law as above, the learned Judges sought reliance upon the decision reported in **M/s Shiv Chand Amolak Chand v. Regional Transport Authority & Anr. - (1983) 4 SCC 433** wherein a similar conclusion was arrived at while considering an application for variation by way of extension of the route concerned covered by a scheme. The learned Judges therefore took the view ultimately in paragraph 17:

"17..... Assuming, therefore, that an application for variation of the conditions of a permit referred to in sub-section (8) of Section 57 is to be deemed by a fiction of law to be an application for the grant of a new permit the question to which we must address ourselves is for what purpose is such an application for variation deemed to be an application for grant of a new permit. Reading sub-sections (3) to (8) of Section 57 as a whole, it is clear that the only purpose is to apply to such an application for variation the procedure prescribed by

A *sub-sections (3) to (7) of Section 57 and not for the purpose of providing that when the application for variation is granted, the permit so varied would be deemed to be a new permit*..... " (Underlining is ours)

25. Having thus answered the first question by holding that B application for variation dealt with under Section 57(8) of the Act cannot be construed as an application for a new permit, the second question was answered in the said decision as under in paragraph 18:

"18. Even though when the condition of a permit is allowed to be varied on an application made under sub- C *section (8) of Section 57, the permit so varied is not a new permit, the question still remains whether in the case of an existing inter-State permit exempted under the said Scheme an increase in the number of trips or the number of vehicles allowed to be operated under such a permit would be inconsistent with the provisions* D *of the said Scheme. We fail to see any inconsistency between an increase in the number of vehicles or trips allowed under such a permit and the provisions of the said Scheme. So far as the portions of the inter State route covered by the said Scheme are concerned, the* E *permits of the existing permit-holders have been rendered ineffective. Further, by the said Scheme as modified, the existing permit-holders are not allowed to pick up or set down passengers on these portions of the notified routes. Whether one vehicle or more traverse these portions or whether the same vehicle traverses such* F *portion more than once cannot any manner affect the services operated by the Appellant on such portions since no passengers are allowed to be picked up or set down or such portions. All that would happen is that these vehicles, in the course of their inter-State operation* G *would traverse these portions of the notified routes without in any way operating as stage carriages for such portions."*

26. Having thus noted the question posed and the answer rendered in the said decision, what is to be further noted is that though a detailed H reference to the provisions contained in Chapter IV-A was made in the

said decision, before reaching the ultimate conclusion in paragraph 18, we find that there was no discussion as to the overriding effect of Chapter IV-A on Chapter IV as well as the freezing effect of Section 68FF of the Act under the scheme with reference to the existing permit holders and their operations. We therefore wish to deal with the said aspect in detail in the later part of this judgment to find whether the said view expressed in ***'JAYARAM'*** can be approved or disapproved.

27. With that we come to the Constitution Bench decision in ***'ADARSH TRAVELS'***, the question posed for consideration is noted as under in the very first paragraph which is to the following effect:

> *".....The question for our consideration is, where a route is nationalised under Chapter IV-A of the Motor Vehicles Act, whether a private operator with a permit to ply a stage carriage over another route but which has a common overlapping sector with the nationalised route can ply his vehicle over that part of the overlapping common sector if he does not pick up or drop passengers on the overlapping part of the route? The answer to the question really turns on the terms of the scheme rather than on the provisions of the statute, as we shall presently show."*

28. The Constitution Bench while dealing with the said question, made a detailed reference to the provisions contained in Chapter IV-A and while making reference to Section 68C of the Act, observed as under in paragraph 5:

> *"5. .....The policy of the legislature is clear from Section 68-C that the State Transport Undertaking may initiate a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the State Transport Undertaking in relation to any area or route or portion thereof. It may do so if it is necessary in the public interest. The scheme may be to the exclusion, complete or partial, of other persons or otherwise. The scheme should give particulars of the nature of the service proposed to be rendered, the area or route proposed to be covered and such other particulars as*

A *may be prescribed.*"

29. Thereafter in paragraph 6 it was held as under:

B *"6. It is thus seen that while the provisions of Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IVA are clear and complete regarding the manner and effect of the "take over" of the operation or road transport service by the State Transport Undertaking in relation to any area or route or portion thereof. While on the one hand, the paramount*

C *consideration is the public interest, the interest of the existing operators are sufficiently well- taken care of and such slight inconveniences to the travelling public as may be inevitable are sought to be reduced to a minimum.....*" (Emphasis added)

D 30. A further reference can be made to the emphasis made by the Constitution Bench on the implication of Section 68C, Section 68D(3) and Section 68FF of the Act in the light of the definition of the expression 'Route' in Section 2(28-A) of the Act in paragraph 7. It will be useful to refer to the said part of the judgment which is to the following effect:

E *"7. A careful and diligent perusal of sec.68-C, sec.68-D(3) and sec.68FF in the light of the definition of the expression 'route' in sec.2(28-A) appears to make it manifestly clear that once a scheme is published under sec.68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial*

F *of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his*

G *vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area..... The question*

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is one of weighing in the balance the advantages conferred on the public by the nationalisation of the route C-D against the inconveniences suffered by the public wanting to travel straight from A to B. On the other hand, it is quite well known that under The guise of the so called 'corridor restrictions' permits over longer routes which cover shorter notified routes or 'overlapping' parts of notified routes are more often than not misutilised since it is next nigh impossible to keep a proper check at every point of the route. It is also well known that often times permits for plying stage carriages from a point a short distance beyond one terminus to a point a short distance beyond another terminus of a notified route have been applied for and granted subject to the so-called corridor restrictions, which are but mere ruses or traps to obtain permits and to frustrate the scheme. If indeed there is any need for protecting the travelling public from inconvenience as suggested by the learned counsel we have no doubt that the State Transport Undertaking and the Government will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public." (Emphasis added)

31. The Constitution Bench ultimately answered the question posed by it by holding as under in paragraph 8:

"8..... It is impossible to accept the argument that only the termini have to be looked at and the rest of the highway ignored in order to discover a route for the purposes of the Motor Vehicles Act. Equally without substance is the plea that if an operator does not pick up or set down any passenger between the two points of the common sector he cannot be said to be plying a state carriage between these two points. The argument is entirely devoid of substance for the simple reason that the operator does charge the passenger for the distance travelled along the highway between these two points also....."

32. With that we shall now refer to the so-called conflicting

judgment viz., ***'EGAPPAN' (supra)***. The facts in the said case are noted in paragraph 2, which requires to be noted and the same is extracted as under:

> *"2. The facts of the case are these. On June 30, 1976, as stated earlier, the approved scheme was published under Section 68-D of the Act in the Tamil Nadu Government Gazette in respect of the route Madurai to Kumuli authorising the appellant to run its stage carriages on that route. By that approved scheme it was proposed to exclude comp'etely all other persons from operating their stage carriage services under permits covering the entire route, referred to above except those persons mentioned in Annexure II to the said scheme without prejudice to any future modifications, variations etc. of their permits. The operators whose names had been mentioned in Annexure II to the scheme were persons who were existing operators on the different sectors of the notified route on the date of the publication of the scheme. The respondent was not one of the those persons who was running a stage carriage service on any part or sector of the route in question on the date of its publication. Hence, his name was not mentioned in Annexure II to the scheme. He was then operating a stage carriage service under a permit issued under the Act on the route Batlagundu to Usilampatti which was a non-scheme route. On February 28, 1981 he was able to secure the variation of the said permit from the Regional Transport Authority which enabled him to operate on the route measuring 21.4 Kms. from Usilampatti to Checkanurani, which formed a sector of the notified route. The appeal filed against the said order was dismissed and no revision petition was filed against the order dismissing the said appeal. On 23.12.1982 he obtained from the Regional Trans- port Authority a second variation of his permit under which he was authorised to operate his stage carriage service over a distance of 16.6. Kms. from Checkanurani to Madurai which was also a part of the notified route.*

An appeal filed against that order was dismissed by the State Transport Appellate Tribunal. A revision petition was filed under Section 64-B of the Act (as in force in the State of Tamil Nadu) before the High Court. The High Court dismissed the revision petition. This appeal by special leave is filed against the above order of the High Court." (Underlining is ours)

33. Thereafter, while dealing with the provisions contained in Chapter IV-A, it was held as under in paragraph 4:

"4..... In the context in which Section 68-F(1-D) appears we find it difficult to agree that the application for variation of a permit by including the whole or any part of route in respect of which a scheme is published under Section 68-C of the Act can be treated as falling outside the mischief of Section 68-F(1-D) of the Act. There is no justification to limit the application of Section 68-F(1-D) of the Act to only applications for fresh permits or their renewal and to leave out applications for variation of a permit by the inclusion of the route or a portion of the route in respect of which a scheme is published. The fact that the applicant is the holder of a permit to operate a stage carriage on another route whose variation he is seeking by the inclusion of a route or a part thereof in respect of which a scheme is published under Section 68-C of the Act ought not to make any difference. The principle underlying Section 68-F(1-D) of the Act is that the number of services on such a route should be frozen on the publication of a scheme under section 68-C of the Act. It is not, however, necessary for us to pursue the applicability of Section 68-F(1-D) of the Act to the present case any further since it is brought to our notice that the very same route is the subject-matter of the approved scheme published under Section 68-D of the Act on June 30, 1976 to which we have already adverted. The approved scheme, as mentioned earlier, excludes the operation by others of stage carriage services on the above mentioned route Madurai to Kumuli except those whose names are

A *mentioned in Annexure II attached thereto. The respondent is not protected by any provision in the approved scheme itself. He cannot be permitted to operate on any sector of the notified route in question in view of the provisions contained in Sections 68-C, 68-D and 68-FF of the Act. The effect of these provisions has been summarised by a Constitution Bench of this Court in Adarsh Travels Bus Service and Another Vs. State of U.P. and Others, [1985] 4 S.C.C. 557. Chinnappa Reddy, J. speaking for the Constitution Bench observed at page 566 thus:....." (Emphasis added)*

34. The very same paragraph which we have referred to in the Constitution Bench was extracted and the law was declared to the effect that once an approved scheme is published, the number of service on such a route is frozen on the publication of the scheme under Section 68-C of the Act. It is also worthwhile to note that the word of caution expressed in ***'ADARSH TRAVELS'*** in para 7 of that judgment has been found to have been abused in ***'EGAPPAN'*** by getting two variations by a non-scheme operator successfully and was able to operate without any hindrance.

35. The last of the decision which requires to be noted in the present context is the one reported in ***'KSRTC' (supra)***. That was also a case where the route was covered by an approved scheme under Chapter IV-A of the Act. The respondents private operators applied for variation of the conditions of their respective permits who were granted the variation, which resulted in permission to operate more trips in an application filed under Section 57(8) of the Act. The High Court declined to interfere and this Court after referring to the above referred to two judgments merely stated that the law laid down in ***'ADARSH TRAVELS'*** does not apply to the facts of that case and without any discussion much less detailed discussion, dismissed the appeal.

36. Having thus noted the various decisions covering this issue, we only wish to make a detailed reference to Section 57(8) of the Act and some of the provisions contained in Chapter IV-A of the Act viz., Section 68-B, 68-C, 68-D, 68-E, 68-F(1D) and 68-FF of the Act, which are as under:

*"**57(8)** An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of trips above the specified maximum, or by altering the route covered by it, or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit.*

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles."

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***68B.** Chapter IVA to over ride Chapter IV 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 IV of this Act or in any other law for the time being in force or in any instrument having effect by virtue of any such law.*

***68C.** Preparation and publication of scheme of road transport service of State transport undertaking. Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered*

A *and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct.*

68D. *Objection to the scheme. (1) On the publication*
B *of any scheme in the Official Gazette and in not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme,-*

(i) any person already providing transport facilities by
C *any means along or near the area or route proposed to be covered by the scheme;*

(ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government ; and

D *(iii) any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies, may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.*

E *(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify the scheme.*

F *(3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates*
G *shall be called the notified area or notified route :*

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

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68E. Cancellation or modification of scheme:- (1) Any scheme published under sub-section (3) of section 68D may at any time be cancelled or modified by the State transport undertaking and the procedure laid down in section 68C and section of 68D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be cancelled or modified as if the proposal were a separate scheme:

Provided that the State Transport Undertaking may, with the previous approval of the State Government, modify without following the procedure laid down in section 68C and section 68D, any such scheme relating to any route or area in respect of which the road transport services are run and operated by the State Transport Undertaking to the complete exclusion of other persons in respect of the following matters, namely:-

(a) increase in the number of vehicles or the number of trips;

(b) change in the type of vehicles without reducing the seating capacity ;

(c) extension of the route or area, without reducing the frequency of the service ; or

(d) alteration of the time-table without reducing the frequency of the service.]

(2) Notwithstanding anything contained in sub-section (1), the State Government may, at any time, if it considers necessary in the public interest so to do, modify any scheme published under subsection (3) of section 68D, after giving,-

(i) the State Transport Undertaking, and

(ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,'

an opportunity of being heard in respect of the proposed modification.

A *68F(1-D) Save as otherwise provided in sub-section (lA) or subsection (lC), no permit shall, be granted or renewed during the period interevening between the date of publication, under section 68C of any scheme and the date of publication of the approved or modified scheme, in favour of any person for any class of road transport service in relation to an area or route or portion thereof covered by such scheme :*

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Provided that where the period of operation of a permit in relation to any area, route or portion thereof specified in a scheme published under section 68C expires after such publication, such permit may be renewed for a limited period, but the permit so renewed shall cease to be effective on the publication of the scheme under sub-section (3) of section 68D.]

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68FF. *Restriction on grant of permits in respect of a notified area or notified route, Where a scheme has been published under sub-section (3) of section 68D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme;*

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Provided that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, 'as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the' condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route."

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37. At this juncture, it is necessary to state that in the decision in ***'JAYARAM'*** and ***'ADARSH TRAVELS'***, this Court has extensively covered the scheme of the provisions contained both under Chapter IV as well as Chapter IV-A of the Act. Therefore, the said part of the

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above referred to decisions can be noted and followed without making any further reference to the scheme of the provisions contained in those chapters. However, for the purpose of deciding this reference, it is necessary for us to refer to the above provisions which we have extracted and analyse the prescriptions contained in those provisions in order to give our answer to the questions referred.

38. **(i)** In the first instance, we take up sub-section (8) of Section 57 of the Act. A close reading of the said sub-section shows that an application for variation of any permit in the case of a stage carriage, for the purpose of increasing the number of trips as well as number of vehicles covered by the permit, with which we are concerned, mandatorily to be treated as an application for the grant of a new permit. Going by the caption of Section 57 of the Act, one may tend to think that it is merely a procedure when anyone apply for grant of permit, which includes stage carriage permit. But, when we make a close reading of the sub-sections (1) to (7), we can presently demonstrate how such provisions mandates compliance of various specific requirements, which are intricately connected, with the grant of a new permit, which are to be 'mutatis mutandis' to be complied with even in respect of an application for variation, which is governed by sub-section (8). Sub-section (2) stipulates that an application for variation in a stage carriage permit should be made not less than six weeks before the date on which it is desired that the permit shall take effect. Therefore, when an application for variation like the present one with which we are concerned viz., increasing the number of trips or increasing the number of vehicles, the applicant must specify the date from which he desires such variation to take effect and that filing of the application should be mandatorily made by giving not less than six weeks time gap from the desired date of the applicant for the varied condition to take effect.

(ii) Under sub-section (3), once the Regional Transport Authority receives an application for variation of a stage carriage permit, statutorily the Authority should make the application available for inspection at the office of the Authority and should also publish the application or the substance of it in the manner prescribed under the Rules together with the notice of the date before which representation in connection with such application for variation should be submitted. In that respect, period of 30 days should be prescribed by the Regional Transport Authority from the date of the publication apart from specifying the time and the

A place where the application along with the representation whatever received would be considered by him. We are not concerned with the proviso to sub-section (3) which has nothing to do with the consideration of an application for variation.

(iii) When we refer to sub-section (4), here again we find that the B mandatory requirement for consideration of any representation made in connection with an application for variation, should have been submitted before the appointed date and also ensured that a copy of such representation was simultaneously furnished to the applicant who applied for the variation.

C **(iv)** Under sub-section (5) when any representation as provided for in sub-section (3) is made as stipulated under sub-sections (3) and (4), then it is mandated on the Regional Transport Authority to dispose of the application at a public hearing where the applicant, as well as, the person who made the representation is entitled for an opportunity of personal hearing either in person or by a duly authorized representative. D We are not concerned with sub-section (6), which pertains to contract carriage permits.

(v) Under sub-section (7), in the event of the Regional Transport Authority rejecting an application for variation, he should give reasons in writing for such rejection.

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39. Therefore, a conspectus consideration of sub-sections (1) to (5) and (7) along with sub-section (8) shows that an application for variation when treated as an application for the grant of a new permit, all the mandatory requirements which are to be followed for the grant of a new permit have to be followed in letter and spirit even with reference F to an application for variation viz., in the case on hand for either increasing the trips as well as for increasing the number of vehicles. It is not as if such procedures prescribed in sub-sections (1) to (7) barring sub-section (6) such procedures are to be followed casually and that the same would ultimately result in grant of variation irrespective of compliance or non-G compliance of such rigorous procedures. If the prescription of the time limit, specified in sub-section (2) is not complied with, it may result in instantaneous invalidation of the application at the very threshold. Similarly, if the Regional Transport Authority failed to follow the statutory prescription in the matter of publication of such an application, by following the time limit and the other prescribed procedure under the Rules, then

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again, the consideration of the application itself may not take place until such prescriptions are meticulously followed and complied with. Then again, under sub-section (4) anyone who wants to make a representation as against the grant of variation will have to strictly follow the time limit viz., filing of such representation before the appointed date as notified by the Regional Transport Authority and that while filing such representation, it must be ensured that simultaneously a copy was served on the applicant, failure to follow such prescription will automatically result in rejection of the right of hearing or right of consideration of any such representation with reference to the application for variation.

40. The requirement of giving a public hearing coupled with requirement of personal hearing to the applicant as well as the person making the representation is yet another prescription which again shows that very serious consideration should be given to the application for variation in as much as it will have very serious impact on the operation of the vehicle in the route in question in the event of such variation being granted, anyone living in that area can voice his grievance or support before the Regional Transport Authority in such a public hearing. In other words the very purpose of the requirement of providing a public hearing in sub-section (5) shows that an application for variation is not merely concerned with the applicant alone or anyone who wants to raise his objections by way of representation to any such application for variation. But, it will open up the scope for every member of a public in the locality concerned to raise his voice in the public hearing which may have serious repercussions in the event of the variation being granted or not granted, which the Regional Transport Authority would be otherwise bound to consider before he pass an order in the application for variation by giving adequate reasons for grant or otherwise of such application for variation. Similarly, the representatives may be another exempted operator or the State owned Corporation, who can raise their objection and point out how the grant of variation will not serve the public at large or create inefficiency or uneconomical and result in lack of coordination.

41. Having thus analysed the entire Section 57 of the Act barring sub-section (6) and sub-sections (9) and (10), it must be stated that though in sub-section (8), it is stated that an application for variation should be treated as an application for the grant of a new permit, in effect, such consideration of an application for variation would be nothing but an application for the grant of a new permit as every required step

A for the grant of a new permit will have to be applied and scrupulously followed in order to consider an application for variation and for its ultimate disposal.

42. Therefore, we are not in a position to approve of the conclusion in ***'JAYARAM'*** to the effect that the application for variation in spite of B such specifications and requirements to be complied and carried out under various sub-sections of Section 57 of the Act, it is merely a fictional requirement and will not amount to requirement strictly to be followed and applied in the case of grant of a new permit. We therefore overrule such a conclusion reached in ***'JAYARAM'***. We also state that the contra opinion expressed in ***'RAGHURAM'*** will hold good.

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43. With that when we come to the other Sections with which we want to make an analysis, in the foremost, reference to Section 68-B of the Act has to be made which falls under Chapter IV-A and which states that all the provisions contained in Chapter IV-A shall have supervening effects on any inconsistent provisions contained in Chapter D IV or any other law for the time being in force or in any instrument having effect by virtue of any such law. Under Chapter IV Sections 42 to 68 of the Act have been listed. In so far as, Section 57(8) of the Act, as has been noted by us and the manner in which we interpret it, we can safely hold that there will be no inconsistency with any of the provisions E contained in Chapter IV-A. We can therefore safely proceed that the said Section 57 will apply in all force even in respect of the prescription contained in the provisions under Chapter IV-A viz., Section 68A to 68I of the Act.

44. Keeping the said broad statutory prescription vis-à-vis Section F 57 of the Act, when we proceed to analyse Section 68C of the Act, we find that the formulation of a scheme is to be prepared and published by a State Transport Undertaking in respect of the services to be provided in any area or route to be covered. The underlying object for such formulation of a scheme for its preparation and publication, must be for providing an EFFICIENT, ADEQUATE, ECONOMICAL and G PROPERLY coordinated road transport service with the paramount consideration of public interest and such scheme should be prepared and published. Section 68C of the Act, therefore, at the very inception of the formulation of a scheme by a State Transport Undertaking, should have the basic consideration of efficient, adequate, economical and H properly coordinated transport service in public interest. Once such a

scheme is formulated with the above avowed objects in mind and is notified, under Section 68D, on the publication of such a scheme in the official gazette as well as in the newspaper in the regional language circulating in the area or route, which is proposed to be covered by such scheme, every person who is already providing transport facility in that area or route or any association representing persons interested in the provision of road transport facilities recognized by the State as well as the local authority or police authority who are also located in that area or route, will be entitled to raise their objections or their representations within 30 days from the date of publication to the State Government.

45. Under sub-section (2) of Section 68D of the Act, the State Government after considering the objections and after giving an opportunity of hearing to the objector or his representative as well as the representatives of the State Transport Undertakings can either approve the scheme as proposed or give a modified scheme. Under Section 68E of the Act, the scheme can be cancelled in the form in which it was approved or can be modified by following the very same procedure prescribed under sub-sections 68C and 68D of the Act. However, the State Transport Undertaking with the previous approval of the State Government can modify the scheme without following the procedure laid down in Section 68C and 68D of the Act under the proviso to Section 68E. That apart under sub-section (2) of Section 68E of the Act, the State Government is fully empowered to modify any scheme published under sub-section (3) of Section 68D of the Act after giving an opportunity of hearing to the State Transport Undertaking, as well as, to any other person who in the opinion of the State Government is likely to be affected by the proposed modification. Once the approved scheme comes into effect, under Section 68F of the Act, the State Transport Undertakings can be issued with the required permits.

46. Section 68FF of the Act is an important section which requires to be noted with some deeper scrutiny. Section 68FF creates a restriction on grant of permits in respect of notified area or notified route. A close reading of the said provision discloses that where an approved scheme as stipulated under Section 68D(3) of the Act in respect of an area or a route is published, then, it prohibits grant of any permit except in accordance with the provisions of this scheme. The substantive part of Section 68FF therefore makes it clear that once the approved scheme comes into play, then, there will not be any scope for grant of any permit

A in that area or the route covered by the scheme, except what is specifically permitted or provided under that scheme itself. By way of an analogy, it can be stated that where, under the scheme while the State Transport Undertaking alone is exclusively permitted to operate the service in any particular area or route and even while providing for such exclusive operation by State Transport Undertaking, if the operation by any existing permit holder is saved either fully or partially that as rightly stated in ***'RAGHURAM'*** and ***'EGAPPAN'***, such operation by other private operators gets frozen and as was held by us earlier, while interpreting Section 57 (8) of the Act that application for variation will be nothing but an application for grant of a new permit. Therefore, even in respect of protected operation under the scheme of any existing operator, as on the date of the approved scheme, he will have to restrict his operations to the extent to which he was permitted as on that date and the manner in which such operation was permitted and not beyond.

47. Once things get frozen, the frozen stage can be changed only by way of a permitted process. Here, when by virtue of Section 68FF of the Act, the permit stood frozen, as on the date the scheme was published, then, if the said frozen stage is to be altered or modified, the provision by which such modification or alteration can be effected can be only by applying Section 68E, which is the legally permissible manner in which such frozen stage can be altered or modified. Any other manner in which the said frozen stage is sought to be altered or modified, that is totally prohibited under the statutory provisions. Therefore, if under the scheme, if the permit gets frozen, within the prescriptions contained under the scheme and if a variation is to be considered for that permit either by way of increase in the number of trips or addition of vehicle without any modification or alteration effected under Section 68E of the Act, it will be wholly prohibited under the provisions falling under Chapter IV-A and consequently, such variation applied for can never even be considered by any of the authorities. That will be the consequential effect of the application of Section 68FF of the Act and other relevant provisions falling under Chapter IV-A. In our considered opinion, any other interpretation would run contrary to the prescription contained in Chapter IV-A of the Motor Vehicles Act.

48. While interpreting Section 68FF of the Act, therefore we are convinced that that is the only manner in which an interpretation to the said Section 68FF can be made and in no other manner. The only other

alternate available is what is provided under Section 68E of the Act which again is within the jurisdiction of the State Transport Undertaking or the State Government under sub section 1 or 2 as the case may be.

49. As we are not called upon to answer any other question, we confine ourselves to the question viz., on the publication of an approved scheme whether the number of the trips of the vehicles of the existing operators can be increased by granting the variation of the permit even when the existing operators are allowed to carry on their operation on the date of the publication of the scheme as it was existing as on that date. To the said question, one other aspect to be considered is along with the number of trips can such existing operator aspire to seek for increasing the number of vehicles as well should also be added. In fact, when the question of conflict as between ***'JAYARAM'*** and ***'EGAPPAN'*** was noted while making the present reference to the Constitution Bench in the order dated 22.07.2003, the conflict really pertain to the variation applied for both by way of increase in trips as well as increase of vehicles.

50. Having analysed the above referred to decisions and the statutory provisions, before rendering our final answer to the question referred to this Constitution Bench, it will be worthwhile to make a reference and list out the legal propositions which we are able to discern based on our detailed consideration in this reference:

(a) Chapter IV-A supersedes any inconsistent provisions in Chapter IV.

(b) The policy of the Legislature is clear from Section 68C that the State Transport Undertaking may initiate a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service to be run and operated by the State Transport Undertaking in relation to any area or route or portion thereof. It may do so if it is necessary in the public interest.

(c) Grant of variation under Section 57(8) will be as good as grant of a new permit.

(d) Section 57(8) is controlled by Section 68FF falling under Chapter IV-A, by virtue of the superseding effect of Section 68B also falling under Chapter IVA

A **(e)**Once a scheme formulated under Section 68D gets approved under 68D(3) of Chapter IVA, then all the permits in the route / area covered by the scheme will get frozen by virtue of operation of Section 68FF.

(f) The effect of Section 68FF can be altered / modified / B cancelled only in the manner as provided for under Section 68E and in no other manner.

(g) By virtue of the above, either a grant of a new permit or the variation of an existing permit of private operator cannot be ordered in respect of an area or route covered C by an Approved Scheme.

(h) Increase in the number of trips or vehicles which were being run under the existing exempted permit under a Scheme will amount to grant of a new permit to operate one more Stage Carriage which is not permissible under D Section 68FF.

(i) The proposition of law, laid down by this Court in ***'JAYARAM'*** impliedly stood overruled in ***'ADARSH TRAVELS'***.

(j) The economy and coordination, two of the factors, which E govern the Approved Scheme, will be seriously infringed if the variation is to be granted of the existing permit condition.

(k) Even if there is an interstate agreement under Section 63 of the Act for increasing the number of trips, such an F agreement cannot override the provisions of Chapter IV-A by virtue of Section 68B of the Act. Section 63 being in Chapter IV of the Act, the Scheme approved under Chapter IV-A will prevail over it.

(l) The Approved Scheme will exclude the operation of other G stage carriage services on the Route / Area covered by the Scheme, except those whose names are mentioned in the Scheme and to the extent to which such exception is allowed.

(m) The provisions in Chapter IV-A are devised to override

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the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are clear and complete regarding the manner and effect of the "takeover" of the operation of a road transport service by the State Transport Undertaking in relation to any Area or Route or portion thereof *(ADARSH TRAVELS)*.

(n) A necessary consequence of those provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorized so to do by the term of the scheme itself. He may not operate on any part or portion of the notified Route or Area on the mere ground that the permit as originally granted to him covered the notified Route or Area *(ADARSH TRAVELS)*.

51. Having regard to the above propositions, which we are able to arrive at, we hold that the judgment reported in ***Karnataka State Road Transport Corporation, Bangalore Vs. B.A. Jayaram and others - 1984 (Supp) SCC 244*** is no longer a good law and the decision reported in ***Pandiyan Roadways Corporation Ltd. Vs. M.A. Egappan - (1987) 2 SCC 47*** stands approved which is in tune with the Constitution Bench decision reported in ***Adarsh Travels Bus Service and another Vs. State of U.P. and others - (1985) 4 SCC 557*** and the observations made in ***R.Raghuram Vs. P. Jayarama Naidu and others – 1990 (supp) SCC 361*** stands approved.

52. The reference is answered as above. Having thus answered the reference, we direct the Registry to list the cases before the regular Bench for disposal by applying the principles set down in this judgment wherever it is applicable.

Devika Gujral

Referred question answered.