V. Parthasarathi, Proprietor, Sathivilas Bus Service, Porayar and Others Vs State of Tamil Nadu and Others

Court: Madras High Court

Date of Decision: July 19, 1972

Acts Referred: Constitution of India, 1950 â€" Article 13(2), 14, 19(1), 19(5), 31

Citation: AIR 1974 Mad 76 : (1973) ILR (Mad) 1

Hon'ble Judges: K. Veeraswami, C.J; Raghavan, J

Bench: Division Bench

Judgement

Raghavan, J.
This batch of Writ Petitions relates to the validity of the Tamil Nadu Fleet Operators Stage Carriages (Acquisition) Act, (Act

XXXVII of 1971). The petitioner in W.P. No. 395 of 1972 is a fleet operator running the bus service in the name of Sri Sathi Vilas Bus Service

holding 52 stage carriage permits as on 19-6-1971, while according to him he had transferred 24 out of the said 52 permits in favour of other

persons for consideration between 28-5-1971 and 18-6-1971 but that the joint applications for transfer have been kept pending without passing

orders and that if the transfers had been given effect to, his fleet strength will be below 50 permits, seeking the issue of a Writ of Mandamus

restraining the respondents from enforcing the provisions of the above Act against him. W.P. Nos. 409, 411, 412, 421, 422, 434, 435 and 452 of

1972 are filed by some of the transferees of the permits from the petitioner in the other two Writ Petitions, seeking a Writ of Mandamus restraining

the respondents from enforcing the provisions of the Act against them and W.P. No 515 of 1972 is by the same fleet operator in W.P. No. 395 of

1972 seeking the issue of a Writ of Prohibition prohibiting the respondents from proceeding with the notice dated 3-3-1972 issued under the

impugned Act seeking to take further proceedings in accordance with the provisions of the Act at meeting to be held on 7-3-1972. In substance

the contentions in the above batch of Writ Petitions are common, namely, whether the impugned enactment is ultra vires as infringing the

fundamental rights of the petitioner and therefore invalid and unenforceable.

2. We shall first take up W.P. No. 395 of 1972. The petitioner''s father commenced to run the bus service under the name and style of Sri Sathi

Vilas Bus Service in 1922 and after his death in 1963 the petitioner became the permit holder holding 52 primary stage carriage permits as on 19-

6-1971 and has been managing the service ever since,19 out of them are plying in Pondicherry under counter signature of the authorities of the said

State, and in addition 3 stage carriage primary permits were issued by the State of Pondicherry. Further the petitioner holds 7 spare bus permits.

The petitioner''s case is that in order to operate economically and efficiently they entered into agreements with purchasers of transferring 24

primary permits operating in Tamil Nadu between 16th of April 1971 and 10th of June 1971, that in pursuance of these agreements of transfer,

they had given possession of these 24 vehicles to the purchasers after receiving advances from them, that joint applications for transfer were filed in

regard to 24 primary permits in the State of Tamil Nadu on various dates commencing from 28-5-1971 and ending with 18-6-1971, that in the

case of one such transfer, joint application dated 18-6-1971 was made for which transfer fee was paid on 18-6-1971 itself which, however, was

received at the Office of the Regional Transport Authority on 19-6-1971, that the said transfers were made bona fide and in public interests, that

the joint applications were not disposed of or notified by the Transport authorities under the provisions of the Motor Vehicles Act, 1939, that out

of the other stage carriage permits held by him on 19-6-1971, 2 jeep stage carriage permits were surrendered on 24-7-1971 and one stage

carriage permit operating on the route Grand Anaicut to Kaveripoompattinam stopped plying on 3-9-71 and the Writ Petition filed by the

petitioner which was pending in this Court was dismissed as withdrawn, the even prior to the introduction of the Bill relating to the impugned

enactment and the announcement by the Chief Minister of Tamil Nadu on the floor of the Assembly on 18-6-1971 they had applied for transfers,

that on 22-11-1971 a copy of the Bill was sent to the petitioner calling upon him to submit a complete inventory of his properties covered by

clause (3) if the Bill and that on 5-2-1972 the petitioner received a notice issued by the second respondent u/s 3(4) of the impugned Act calling

upon him to show cause why his service should not be notified u/s 3(1) of the Act. On 18th of February, 1972 the petitioner filed Writ Petition 395

of 1972 questioning the vires of the Tamil Nadu Fleet Operators Stage Carriages (Acquisition) Act, 1971 on the following main grounds:--

(1) The Act violates Article 19(1)(f) and (g) and Article 14 of the Constitution;

(2) The impugned enactment violates Article 31 of the Constitution as the compensation provided in illusory and all the components constituting the

acquired property are not valued separately and compensation paid;

(3) The impugned enactment does not disclose how the taking over of the units of stage carriages exceeding 50 would subserve public interests;

(4) A scheme for operation of stage carriage by the State Transport Undertaking in order to be in public interest has to be an economical, efficient

and a co-ordinated scheme of road transport.

(5) There are only 5 fleet operators in Tamil Nadu, who own more than 50 stage carriage permits and they are noted for their very high efficiency

of operation, while the administration reports of the State Transport undertaking shows that the Department is running at a loss, that the rate of

breakdown of vehicles is very high, that the rate of accident is very high, that the rate of no adherence to the schedule of timings is very high, that

the rate of cancellation of trips is very high, that the availability of workshop facilities is very meagre, that the services are being operated

inefficiently and that there is lack of discipline among the workers of the Undertaking. That now the acquisition of services operated efficiently all

along if not by the efficiently all along if not by the inefficient operation by the Government is in public interest that a unit of 50 buses and more with

their workshop should be taken over by the Government and the impugned enactment is not in public interest.

(6) The statement of objects and reasons refers to Article 39(b) and (c) of the Constitution seeking to promote a socialist order in keeping with the

advancement of Science and Technology and further to nationalise the commanding heights of the economy without providing for a distribution of

the property acquired to anyone for securing the common good while factually there is no concentration of wealth in the petitioner, who is running

the business at a loss and there is no concentration of wealth in his hands and the object of enactment cannot be achieved in the case if the

petitioner. Thus, the impugned enactment results in a colourable exercise of power.

(7) While the permit holders holding 49 buses and less are left with 10 buses, under Madras Act, 16 of 1971 the permit holders holding 50 and

above are not allowed to retain even the 10 buses;

(8) and that Article 14 of the Constitution is also violated in so far as arbitrary power is vested in the Government to notify or not to notify the stage

carriage permits held by a particular operator resulting in abuse of power.

3. In the transferees Writ Petition, the further contentions put forward by the transferees are that the transfers from the petitioner in W.P. No. 395

of 1972 in their favour were made between 16th of April 1971 and 10th June 1971, that even though such applications were made as early as 28-

5-1971, the consideration of the said applications were delayed deliberately with a view, to acquire the same under the impugned enactment, that

the transferees have been in possession of the vehicles transferred and that they have been receiving the collections from the vehicles every day.

4. In W.P. No. 515 of 1972 the petitioner, who is the same as the petitioner in W.P. No. 395 of 1972 sought for the issue of a Writ of Prohibition

prohibiting the second respondent from holding a farce of an oral hearing in regard to the transfers effected as it is certain that the applications will

be dismissed.

5. The respondents have filed a counter affidavit dealing with the several allegations put forward in the Writ Petitions. Their stand is that the

impugned enactment is constitutionally valid and well within the powers of the Tamil Nadu State Legislature and that there is no justification for

forbearing the respondents from implementing the provisions of the said Act, that the impugned enactment is designed in public interests and is for

the benefit of the community at large, that there are 5 fleet operators in the State of Tamil Nadu including the petitioner, each of whom have more

than 50 stage carriage permits on 19-6-1971, that the stage carriage permits their equipments of one of the operators were acquired on 17-1-

1972 and 3 others on 1-3-1972 under the provisions of the impugned enactment, that the petitioner is the only person, who is seeking to question

the validity of the Acquisition Act, referred to above, that the petitioner has not been running his vehicles prudently for some time past, that his

workers have impounded several vehicles for non-payment of waged due to them resulting in some of the vehicles being off the road, that for the

non-payment of taxes to the Government 3 of the vehicles had been attached under the Revenue Recovery Act and the further proceeding relating

to the sale of the vehicles had been stayed at the instance of the Hire Purchasers, that the arrears of tax due under the Tamil Nadu Motor Vehicles

(Taxation) Act, 1931, by the petitioner amounted to Rupees 2,28,997.50, that the financial predicament of the petitioner was not due to the

statutory notice issued under the impugned enactment but for causes brought about by the petitioner himself and that the impugned enactment does

not offend Article 19(1)(f) and (g) of the Constitution. The respondents further contend that the purposes of the enactment are clear from the

preamble of the Act itself, that there is no substance in the contention that the enactment amounted to a colourable exercise of power by the

Government, that the acquisition seeks to achieve one of the directive principles of State Policy viz., distribution and control of the material

resources to subserve the common good and for avoiding concentration of wealth in a few individuals, that by the enforcement of the impugned

Act, the beneficial effects and consequences are expected to flow to the community at large and that the properties after acquisition will be

transferred in favour of a company or a Corporation owned by the State and that the acquisition under the impugned enactment is not of a going

concern to be run as such. The respondents further contend that the compensation provided to the petitioner under the Act is the market value of

the property acquired. A further sum to cover the value of the unexpired portion of the permits is also given and in any event the adequacy of

compensation is not justiciable. It is further contended that Article 14 and 31 of the Constitution have not been contravened in any manner and that

the provisions contained in the impugned enactment are adequate to determine the extent of compensation and the person entitled to receive the

same, that the impugned enactment does not amount so a fraud on power and that the legislation is designed in public interest and for the benefit of

the community at large. The further attack on the impugned enactment that the Act is ultra vires in so far as it is extra territorial in its operation was

also denied.

6. The main questions which now arise for consideration are:

(1) Whether the impugned enactment violates Article 19(1)(f) and (g) and Articles 14 and 31 of the Constitution in seeking to further the directive

principles laid down in Article 39(b) and (c) of the Constitution;

(2) Whether the acquisition in question is for a public purpose;

(3) Whether the enactment in question amounts to a fraud on power; and

(4) Whether all the components have been taken into consideration in providing compensation.

7. Before dealing with the several contentions put forward it is necessary for us to set out the various statutory enactments relating to

nationalisation. In 1969 Chapter IVA being the special provision relating to State Transport undertaking was introduced in the Motor Vehicles Act

1939 which gave power to the State Transport undertaking to provide an efficient, adequate and economical road transport service run and

operated by the road transport service whether to the exclusion, complete or partial of other persons whenever it became necessary in public

interests to do so. On 18th June 1971 the Government brought in the Tamil Nadu Ordinance 6 of 1971 seeking to amend the Motor Vehicles Act

by imposing a ceiling of 10 (bus permits) on the holding of permits. The purpose of the said enactment was only to impose a ceiling and not for the

acquisition of stage carriage of fleet owners. The said Ordinance provided that no stage carriage permit or renewal of permits shall be granted to

any operator holding 10 permits and more. However, the operators holding more than 10 permits were allowed to surrender the excess permits

within a period of one month from the date of the commencement of the Ordinance to the Regional Transport Authority which granted the permit.

The Ordinance further provided that where the number of stage carriage permits held by any person is not less than 10 and where such person

applies for permission to transfer u/s 59(1) of the Motor Vehicles Act, 1939, the authorities were empowered to reject the application if the

transferred was found to defeat the provisions of the said Ordinance. Clause 10 of the Ordinance provided that the pending applications for

transfer of stage carriage permits u/s 59, on the 18th June, 1971 should be disposed of as per the provisions as amended. The result of the above

ordinance is that no stage carriage operator in the State of Tamil Nadu was allowed to hold permits of more than 10. The above Ordinance was

replaced by Madras Act 16 of 1971 which became Law on 30-7-1971. In regard to bigger operators viz., persons holding 50 or more permits,

the Government considered that the stage carriages of such fleet operators should be acquired and it is with that object the impugned enactment

Madras Act 37 of 1971 came to be passed. The object of the impugned enactment is totally different from the object of the ceiling enactment (Act

16 of 1971). The purpose of the impugned enactment is clear from the statement of objects and reasons which runs as follows:--

Having regard to the directive principles of State Policy embodied in clauses (b) and (c) of Art. 39 of the Constitution of India that the State

should direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to

subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production

to the common detriment and in order to promote a socialist order in keeping with the advancement of science and technology, it is considered by

the Government to be expedient to nationalise the commanding heights of the economy. Accordingly, the Government have decided to undertake

legislation to nationalise all passengers transport division of transport undertakings having fifty or more bus permits as on the 19th June, 1971.

In the Budget speech made on 19-6-1971, the Chief Minister Mr. M. Karunanidhi stated as follows:--

Prevention of the concentration of economic power in the hands of a select few, and a wide dispersal of economic strength among the deserving

many is one of the basic principles underlying the evolution of a socialist society. Another important aspect is to nationalise the commanding heights

of the economy. In pursuance of these goals I am happy to announce that Government has decided to nationalise all passengers transport divisions

of transport undertakings having fifty or more bus permits as on 19th June, 1971. Likewise, it has also been decided that no bus operator shall be

allowed to have more than ten bus route permits at any time. Necessary legislation for these purposes will be introduced in the House at an early

date. I am sure that all sections of this House will welcome, with reservation, these socialist measures.

8. The impugned enactment came to be passed to achieve the above objectives, and it became law on 7th December 1971. Section 2 defined a

''fleet operator'' as meaning an operator holding on the 19th June, 1971 or on any date subsequent to 19th June 1971 fifty or more stage carriage

permits notwithstanding that all or any of such stage carriage permits had expired after the said date but before the notified date. Under the proviso

to the definition of the ""fleet operator"" reserve vehicles kept by the operator to maintain the service efficiently are excluded as also the temporary

permits granted to the operator, under clause (a), clause (b) or clause (c) of Section 62 of the Motor Vehicles Act. Section 2(h) defined the

notified date"". The operator is defined in Section 2(i) as meaning any person whose name is entered in the stage carriage permit as the holder

thereof. Section 2(k) defined ""person interested"" in relation to any acquired property as including the fleet operator and any other person claiming,

or entitled to claim, any interest in the compensation payable on account of the acquisition of such property under the Act. Section 2(1) defines

Stage Carriage"" as including any moveable property ancillary or incidental to the maintenance and control of such stage carriage or moveable

property; and any reserve vehicle or vehicles run on temporary permits. Section 3(1) provides that on and from such date as may be notified by

the Government in this behalf in respect of any fleet operator, every stage carriage owned or operated by such fleet operators shall vest in the

Government absolutely and free from all encumbrances. Section 3(2) of the Act deals with the consequences of the notification issued u/s 3(1). It is

provided therein that all lands buildings, workshops, and other places and all stores, machinery, tools, plants, apparatus and other equipment

exclusively used for the maintenance or repair of, or otherwise in connection with the service of, stage carriage; and all books of accounts,

registers, records, etc., shall vest in the Government absolutely and free from all encumbrances. Sub-clause (3) of Section 3 expressly provides

that the stage carriages and other property vesting in the Government under sub-section (1) and sub-section (2) shall with effect on and from the

notified date be deemed to have been acquired for a public purpose. Sub-clause (4) of Section 3 authorises the Government to call upon a fleet

operator to show cause why the stage carriage and other property referred to in sub-sections (1) and (2) of Section 3 should not be acquired and

after giving the fleet operator an opportunity of being heard, it is provided that the Government may pass such orders as they deem fit. Section 4 is

a procedural section casting a duty on the fleet operator to furnish particulars to the Government or any office authorised by them in regard to

matters called for by them. Section 5 of the Act enumerates the principles and methods of determining compensation. Two methods are provided,

one is for fixation of compensation by agreement and the second is for the appointment of an arbitrator to determine the compensation where no

such agreement is reached. The procedure before the Arbitrator is also provided therein. Section 6 relates to payment of compensation. Section 7

provides that any debt, mortgage, charge or other encumbrance or lien attaching to the acquired property shall be attached to the compensation

amount. Section 8 deals with compensation and the deductions out of the compensation fixed. The manner of payment of compensation is

provided u/s 9 and against any award made by the arbitrator, an appeal is provided to the High Court u/s 10. Section 12 deals with the effect of

transactions which are held not to be bona fide. u/s 15 the transfer of property vested in the Government u/s 3 to a Corporation or a Company

owned by the Government is provided. Where the transfer is effected under sub-section (1) of Section 15 to any Corporation or Company owned

by the Government, it is provided that the stage carriage permit shall be deemed to have been transferred in favour of such Corporation for the rest

of the period covered by the permit. On the expiry of the permit it is provided that the transferee shall be entitled to the renewal of such permit.

Sub-clause (3) of Section 15 relates to employees of the fleet operator exclusively employed in connection with the acquired property immediately

before the notified date. Section 16 relates to the inventory of property and the furnishing of information called for. Section 19 deals with settlement

of disputes. Where a dispute arises regarding the number of stage carriage permits held by any operator on the 19th June, 1971, such dispute shall

be decided by the Government whose decision shall be final. Section 26 of the Act is the overriding provision. Section 27 of the Act gives the

Government power to make rules for carrying out the purposes of the Act. The Act contains a schedule specifying the principles on which the

compensation is computed. Clause 1 therein provides that the compensation to be paid by the Government in respect of the acquired property

shall be the market value of such acquired property as on the notified date and clause 2 provides for a further payment in addition to the amount

payable under clause 1 of a sum of one hundred rupees where the unexpired period of the permit is less than fifteen days and in other cases a sum

of two hundred rupees for every complete month, or part of a month exceeding fifteen days, of the unexpired period of the permit. The proviso to

sub-clause (ii) further makes it clear that the compensation under clause 2 shall in no case, be less than four hundred rupees.

9. We shall now take up the various contentions put forward by the learned counsel for the petitioner. The first contention raised is that the

impugned enactment contravenes Art. 19(1)(f) and (g) of the Constitution. This contention is not available to the petitioner in view of the

proclamation of emergency now in force and, therefore, the learned counsel did not press this contention.

10. It is next contended by the learned counsel that the impugned enactment contravenes Art.14 of the Constitution inasmuch as the classification

between operators owning 50 or more permits and those owning 49 or less is not rational and there is no nexus between the object of the

enactment and the fixation of holders of permits at 50 and over. The learned counsel elaborates his arguments by contending that while a fleet

operator holding 49 permits on 19-6-1971 is allowed to retain 10 buses under the provisions of Madras Act, 16 of 1971, the operators owning

50 buses and over on 19-6-1971 are not allowed even the 10 buses under Madras Act 37 of 1971 but are completely deprived of all their

permits. It is true that the effect of the enactment is as contended by the petitioner, but it is seen that the object of the two enactments are different;

while the earlier enactment imposes a ceiling on the holding of permits the later enactment seeks to acquire the permits held by an operator having

50 or more permits. In this connection reference may be made to the decision of the Supreme Court in the The State of Madhya Pradesh Vs. G.C.

Mandawar, wherein Venkatarama Ayyar, J. held that Art. 14 does not authorise the striking down of a law of one State on the ground that in

contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Center or of the

State unconstitutional by a process of comparative study of the provisions of the two enactments. In the present case the object of the two

enactments being different, we are of opinion that Art. 14 has not been contravened. The classification made by the legislature between permit

holders holding 50 or more permits and those holding 49 and below is intelligible. Even a single individual may be in a class by himself on account

of special circumstances applicable to him and a legislation relating to such single individual will be constitutional. The wisdom of the legislature in

fixing the figure at 50 permits cannot be questioned as the fixation of any other figure is also open to a similar attack. So long as no mala fides is

alleged and established, we are of opinion that the impugned enactment cannot be attacked as contravening Art. 14. We cannot say that the

legislative determination was with a view to deprive the petitioner of his property or his means of livelihood. In fact, there are 4 other fleet owners

who are affected by the Act, but who have not questioned the vires of the enactment. The petitioner can still carry on his business, acquire permits

in the State of Madras subject to the ceiling fixed under the Madras Act 16 of 1971. That right of the petitioner has not, in any manner, been

affected by the impugned enactment. It may further be seen that the acquisition of the permits under the impugned enactment is not with a view to

run the buses by the State but only as a socio-economic measure seeking to avoid concentration of wealth in a few hands. There is no

discrimination within the class and all the permit-holders holding 50 or more permits are treated alike. We find that there is substantial basis for

making the classification and further there is a nexus between the classification and the object sought to be achieved. In this connection the learned

counsel for the petitioner referred to the decision reported in the State of Rajasthan Vs. Mukanchand and Others, where Sikri, J., as he then was

struck down cls. (i) to (vi) in Section 2(e) of the Rajasthan Jaghirdars Debt Reduction Act (9 of 1957) on the ground that that portion did not

satisfy the test of permissible classification and that there was no intelligible principle in exempting certain categories of debts. The learned judge

also found that no intelligible principle was noticeable in exempting certain categories of debts. Again reference was made to th State of Andhra

Pradesh and Another Vs. Nalla Raja Reddy and Others, , wherein it was held that the classification based on Ayacuts has no reasonable relation

to the duration of water supply that in fixing the minimum flat rate for dry or wet lands, the well established principle was ignored and that the whole

classification on the basis of Ayacuts is unreasonable and has no relation to either duration of water supply or to the quality or the productivity of

the soil, that the whole scheme of ryotwari settlement was given up and the imposition of the assessment was left to the arbitrary discretion of the

officers and in that view it was held that the provisions of the Act contravened Article 14 of the Constitution. We are of opinion that the

classification of permit holders of 50 and above and those of 49 and below cannot be said to be unreasonable. It may be that a few fleet operators

owning permits nearing 50 but not touching 50 are allowed to retain 10 buses under the provisions of Madras Act 16 of 1971. But such

considerations cannot be a ground for invalidating the impugned enactment.

11. The learned counsel for the petitioner next contended that while the avoidance of monopoly in the hands of a few operators is the object of

both Madras Act 16 of 1971 and Madras Act 37 of 1971 the fleet operators owning 50 and more and 49 and below are treated differently. As

observed by us earlier, the object of the two enactments being different, one relating to fixing of a ceiling and the other acquisition of permits of

bigger operators, the classification of bigger and smaller operators cannot be said to be unreasonable. It was further contended that under Madras

Act 16 of 1971 State Monopoly was substantially achieved and that there was no need for a further enactment acquiring the permits of bigger

operators. In this connection reference was made to Akadasi Padhan Vs. State of Orissa, , wherein State monopoly in respect of any trade or

business was presumed to be reasonable and in the interest of the general public. The contention, that there was no need for a further enactment

fails. It is true that the legislature could have allowed the ceiling law to apply to the petitioner and four other bigger operators, but if however they

chose to acquire their undertakings, under the impugned enactment, we cannot strike down the impugned enactment as being unreasonable.

12. The next ground of attack by the petitioner is that the impugned enactment contravenes Article 31 of the Constitution. The contention is that

unless the impugned enactment is for a public purpose, it has to be struck down as contravening Article 31(2) and that public purpose cannot be

presumed in the absence of a statement in the enactment itself that the acquisition is for a public purpose. It is no doubt true that the acquisition is

not stated to be for a public purpose in the impugned enactment. Even so, it is contended by the learned Advocate-General that the public purpose

must be presumed when the impugned enactment. Even so it is contended by the learned Advocate-General that the public purpose must be

presumed when the impugned enactment was enacted for the purposes contained in clauses (b) and (c) of Article 39 of the Constitution. The

further contention of the learned Advocate-General is that the preamble to the Constitution and Art. 39(b) and (c) which when read together, the

conclusion will be irresistible that public purpose is intended though not expressed in the enactment. The preamble to the Constitution contains two

important concepts viz., popular sovereignty and socio-economic justice, the former implying that the people are the ultimate sovereign and the

latter representing the aspirations of the people, who have established the Constitution. It may be remembered that the preamble was curved out of

the objective resolution adopted by the Constituent Assembly in January, 1947 on the basis of which the entire constitutional provisions were

subsequently drafted. While Part IV of the Constitution provides that the provisions contained in the part shall not be enforceable by any Court,

that does not mean that the provisions contained therein are ineffective as the said provisions embody the hopes and aspirations of the people.

13. We shall now refer to a few decisions as to how the provisions of Part III and Part IV of the Constitution have to be read even on the

assumption that any of the fundamental rights of the petitioner have been infringed by the impugned enactment. In the The State of Madras Vs.

Srimathi Champakam Dorairajan, , relating to the validity of the communal G. O. it was held that the directive principles of State Policy have to

conform to and run as subsidiary to the chapter on Fundamental Rights. In the The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of

Darbhanga and Others, , in which the validity of several of the Bihari Tenancy Legislation were questioned, the validity was upheld under Article

39(b) and (c) of the Constitution, which provides for de-concentration of wealth and distribution of material resources to the common good.

Mahajan, J., as he then was, at page 311 observed as follows:--

In my opinion, legislation which aims at elevating the status of tenants by conferring upon them the bhumidari rights to which status the big

Zamindars have also been levelled down cannot be said as wanting in public purposes in a democratic State. It aims at destroying the inferiority

complex in a large number of citizens of the State and giving them a status of equality with their former lords and prevents the accumulation of big

tracts of land in the hands of a few individuals which is contrary to the expressed intention of the Constitution.

If the concentration of lands or wealth in the hands of a few individuals is contrary to the basis principles of the Constitution, any right claimed in

respect of it is, therefore, logically against the basis principles of the Constitution and against the directive principles designed to give effect to such

basic principles, and hence unconstitutional. In other words, whenever there is a conflict between an individual right and a legislation purporting to

carry into effect socio-economic policies laid down in Part IV, greater weight should be accorded to the latter, for fundamental rights have to be

exercised by the individuals not only in consonance with the basic principles but also in conformity with the aspirations of the people.

14. The next case of importance decided by the Supreme Court is Bijay Cotton Mills Ltd. Vs. The State of Ajmer, , wherein the validity of the

Minimum Wages Act and the minimum rates of wages fixed thereunder were challenges on the ground that they were ultra vires by reason of their

conflict with the fundamental rights of the employers and the employees guaranteed under Articles 19(1)(g) of the Constitution and that they were

not protected by clause (6) of that Article. The Supreme Court substantially reiterated the rule of construction laid down in The State of Bihar Vs.

Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, . In Mohd. Hanif Quareshi and Others Vs. The State of Bihar, , the Supreme

Court was called upon to pronounce its opinion on the validity of Bihar. Uttar Pradesh and Madhya Pradesh legislations banning the slaughter of

certain animals including cows. S. R. Das C. J. who delivered the opinion of the Court, Said:

We are unable to accept this argument as sound. Article 13(2) expressly says that the state shall not make any law which takes away or abridges

the rights conferred by Chapter III of our Constitution which enshrines the fundamental rights. The directive principles cannot override this

categorical restriction imposed on the legislative power of the State. A harmonious interpretation so interpreted it means that the State should

certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for

otherwise the protecting provisions of Chapter III will be a mere rope of sand.

Thus, the Supreme Court in this case in a language similar to the one used in Champaka Dorairajan''s case, AIR 1951 SC 225, held that the

directive principles cannot override the categorical restriction imposed by Article 13(2) on the legislative power of the State. In Re: The Kerala

Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , it was held that the directive principles shall not be

implemented if such implementation affects the fundamental rights to property of a few individuals. In Sajjan Singh Vs. State of Rajasthan, ;

Mudholkar, J., held that the directive principles are also fundamental in the governance of the country and the provisions of Part III of the

Constitution must be interpreted harmoniously with these principles. In I.C. Golak Nath and Others Vs. State of Punjab and Another, ; Subba

Rao, C. J., held that ""The fundamental rights and the Directive Principles of State Policy enshrined in the Constitution formed an ''integrated

scheme'' and was elastic enough to respond to the changing needs of the society.

15. Thus, applying the tests laid down by the various decisions of the Supreme court the position is that the Articles 39(b) and (c) falling under

Chapter IV have to be integrated with the provision contained in Chapter III and have to be read together, and if so read, the provisions of the

impugned enactment cannot be successfully attacked on the ground that its provisions contravened Article 31 or any of the other guaranteed rights

contained in the Constitution.

16. The question for consideration is whether a public purpose should be stated as such in the enactment: we are of opinion that the legislation in

question which purports to implement the socio-economic policy laid down in Part IV must of necessity be considered as one designed for a public

purpose or as one intended to promote the public interest or as an imposition of a reasonable restriction on the fundamental rights. It is unnecessary

to state in the impugned Act that it is for a public purpose. The Preamble sets out the purpose for which the law in enacted. The acquisition under

the impugned enactment is not for the purpose of the Government running buses. On the other hand, it is only a socio-economic measure with a

view to avoid concentration of wealth in a few hands. When the preamble to the enactment refers to Articles 39(b) and (c), we are of opinion that

there is no need to further state that the enactment is intended for a public purpose as the beneficial effects and consequences arising out of the

impugned enactment are expected to flow to the community at large.

17. The learned counsel for the petitioner relied on the Bank Nationalisation Case in Rustom Cavasjee Cooper Vs. Union of India (UOI), and

contended that Articles 19(1)(f) and Article 31(2) of the Constitution are not mutually exclusive. We have already held that the acquisition of the

property is for a public purpose. If the acquisition is for a public purpose, the reasonableness of the restriction, which includes deprivation, may be

presumed.

There is no substance in the contention of the petitioners learned counsel that the economic structure of the fleet operators have not been taken into

account and consequently Article 39(c) is not attracted. The size if the fleet operators have been fully taken into consideration when the Chief

Minister made the Budget speech on 19-6-1971 indicating the Government"s decision to take over the business of fleet operators owning 50 or

more buses and the impugned enactment only implements the above objective.

18. The next contention by the learned counsel for the petitioner is that Art. 39(b) will apply only to the land distribution and not to the acquisition

of bus permits and that further there is no distribution involved after acquisition. We are of opinion, that Article 39(b) should not be given such

narrow construction and both Articles 39(b) and (c) when read together have the same objective namely to prevent concentration of wealth in any

one individual. It is open to the State to take over the operation of bus transport either to run the service itself or through a Corporation maintained

by the State so that the beneficial effect resulting therefrom will be passed on to the community at large. The contention of the learned counsel for

the petitioner is that Art. 39(a) has also to be satisfied as the petitioner"s means of livelihood is also taken away and in this connection the learned

counsel cited a passage at page 129 in Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, . The

passage cited is an extract from Minister of State for the Army v. Dalziel, 68 CWLR 261. The Passage from the judgment of Rich, J., therein runs

as follows:--

It would, in my opinion, be wholly inconsistent with the language of the placitum to hold that whilst preventing the legislature from authorizing the

acquisition of a citizen''s full title except upon just terms, it leaves it open to the legislature to seize possession and enjoy the full fruits of possession,

indefinitely, on any terms it chooses, or upon no terms at all. In the case now before us, the Minister has seized and taken away form Dalziel

everything that made his weekly tenancy worth having, and has left him with the empty husk of tenancy. In such circumstances, he may well say:

You take my house, when you do take the prop that doth sustain my house; you take my life, when you do take the means whereby I live.

Relying upon this passage the learned counsel for the petitioner contended that what is left over is a mere husk. In our opinion the petitioner''s

means the livelihood have not been taken away. They can still apply for bus permits and compete with others. The possibility of their acquiring

permits is always there. The possibility of their not getting permits cannot be a ground for holding that the petitioner''s livelihood is taken away and

that the impugned Act should be struck down.

19. On the question whether the impugned Act can stand the test of Article 19(5) of the Constitution, the petitioner''s learned counsel referred to a

passage at 1097 in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, . The passage runs as follows:--

In short, the Act, read with the preamble, takes the sthanam, lays down certain tests and proceeds to say that if one or other of the tests if

satisfied in respect of any property claimed to be that of the sthanam, the sthanam by statutory fiction is treated as the tarwad and its properties as

tarwad properties. The tests, as we will presently show, are arbitrary and not germane to the question whether the properties belong to a sthanam

or a tarwad. Whatever may be the phraseology used, in effect and substance, the Act in the guise of applying certain tests seeks to convert certain

sthanams into tarwads and their properties into tarwad properties. It applies equally to sthanams governed by decrees of Courts and sthanams

whose character and title to the properties can be established by clear evidence and to sthanams whose title is admitted.

Relying upon the above passage the learned counsel for the petitioner contended that the impugned legislation cannot stand the test of Article 19(5)

of the Constitution. We are of opinion that the attack of the petitioner on this ground cannot be sustained.

20. In view of the fact that the property is physically or constructively transferred to the State or to a Corporation owned or controlled by the

State, the petitioner will be entitled to compensation under Art. 31. The next question raised by the petitioner''s counsel is that the compensation

provided under the Act in illusory and all the components have not been taken into account in fixing the compensation. According to the learned

counsel permit is property and the value of a permit has been normally taken as rupees one lakh and the net monthly income at Rs. 6000/- and the

compensation provided is illusory. The principles of compensation enunciated in the schedule to the impugned enactment provides for payment of

compensation in respect of the acquired property, as being the market value of such acquired property. In addition to the market value of the

property the impugned enactment further provides that for every permit acquired under this Act they shall be paid (1) a sum of Rs. 100/- where the

unexpired period of permit is less than 15 days and (2) in other cases a sum of Rs. 200 for every complete month or part of the month exceeding

15 days of the unexpired period of permit. Thus, it is seen that in addition to the market value of the acquired property a further payment is also

made. The machinery to arrive at the market value has been provided and also an appeal to the High Court from the award of compensation. In

the above circumstances we are of opinion that the principles of compensation have been adequately provided in the impugned enactment as also

the machinery for determining the compensation. The learned counsel for the petitioner contends that several components, such as good will, the

value of renewal of permits, such renewal according to him being a matter of course have not been taken into account. In this connection the

learned counsel referred to certain passages in the Rustom Cavasjee Cooper Vs. Union of India (UOI), which are as follows:--

(108) Goodwill of a business is an intangible asset; it is the whole advantage of the reputation and connections formed with the customers together

with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of

the concern to earn profits over a course of years or in excess of normal amounts because of its reputation, location and other features; Trego v.

Hunt, 1896 AC 7, Good will of an undertaking therefore is the value of the attraction to customers arising from the name, and reputation for skill,

integrity, efficient business management, or efficient service.

(109) Business of banking thrives on its reputation for probity of its dealings efficiency of the service it provides, courtesy and promptness of the

staff, and above all the confidence it inspires among the customers for the safety of the funds entrusted."" These passages were relied upon by the

learned counsel for the petitioner and his contention is that the goodwill has not been separately valued as such. When a transport business is

acquired by the Government but the petitioner''s business as such is not carried on by the Government or by the Corporation owned or controlled

by the State no question of goodwill of an acquired business will arise. It is only when the business is continued as such the question of goodwill in

the hands of the acquirer will have to be considered. In the present case Sri Sathi Vilas Bus Service owned by Parthasarathi is not continued as

such after acquisition and therefore the question of goodwill of the said service acquired does not arise. Further there is no question of ""goodwill"" in

the case of the petitioner, as the service was operated by him most inefficiently.

21. On the question of valuation of the renewal of permits, we are of opinion that there is no substance in this either. The value of a permit which

had expired is nil unless renewed and the right to get a renewal cannot be assumed; the further contention is that the application for renewal will be

granted, as a matter of course, and the possibility of the renewal of the permits should also be taken into account in arriving at the compensation

payable for the permits acquired under the impugned enactment. There is no substance in this contention. Further the question of compensation

which is the market value of the business acquired has to be decided by the Arbitrator.

22. It is next contended by the learned counsel for the petitioner that the petitioner will be entitled to a just compensation or a just equivalent of

what they have been deprived of and that they must be paid a full compensation for the property acquired. The compensation that is provided

under the impugned enactment is the market value of the acquired property on the notified date. The notified date is defined in Section 2(h) in

respect of a fleet operator as meaning the date specified in the notification issued u/s 3(1) of the Act. The contention of the learned counsel is that

what is provided under the impugned enactment is not the just compensation and the provision relating to payment of compensation are

inadequate.

23. A close scrutiny of Article 31 and 31-A of the Constitution as amended reveals that there exists a dichotomy between two categories of State

acquisitions of property, namely, acquisition of property for ""Governmental Purposes"" and acquisitions for ""social or socio-economic purposes"". In

the former category of cases, it may be open to a Court of scrutinise the provisions relating to compensation provided under the impugned

enactment when any question is raises as to its reasonableness or adequacy. The language of Article 31A shows that the determination of

compensation is left entirely to the legislature. An examination of the Debates of the Constituent Assembly reveals that in respect of acquisitions for

social or socio-economic purposes"", the compensation provided is not open to scrutiny by the Courts. In the present case where acquisition is for

social or socio-economic purposes and the compensation paid is in respect of the property acquired, it is not open to attack on the ground that the

compensation is inadequate or that the various components have not been taken into account in determining compensation. In fact the principles for

determining compensation and the machinery to determine the same have been provided. We are, therefore, of opinion that it is not open to the

petitioner to question the adequacy of compensation at this stage. In fact, the adequacy or otherwise of compensation will not be known at this

stage, until the Arbitrator under the Act decides the question of compensation in accordance with the provisions of the Act. The question of

adequacy of compensation is premature at this stage.

24. The next objection raised by the petitioner is that the workshops and the machinery, stores etc. maintained by the petitioner at various places

for running their service sufficiently have also been taken over under the provisions of the impugned enactment and that such taking over is

unnecessary. u/s 3(1) of the Act on and from the notified date every stage carriage owned or operated shall vest in the Government absolutely free

from all encumbrances. Section 3(2)(i) of the Act provides that all lands, buildings, work-shops and other places and all stores, instruments,

machinery, tools, plants, apparatus and other equipment exclusively used for the maintenance or repair of, or otherwise in connection with the

service of, stage carriages shall vest in the Government absolutely and free from all encumbrances. If the work-shops, instruments etc. are not

exclusively used for the maintenance or repair in connection with the service of the stage carriages, but used for the maintenance or repair in

connection with the service of the stage carriages, but used by the fleet operators for their other services such as lorry service etc., they are not

taken over by the Government. If the stage carriage are taken over, there is no need thereafter for the operators to have the workshops, tools etc.,

which were exclusively used for such stage carriages. On the other hand, such work-shops may be necessary when stage carriages are run by the

Corporations maintained and managed by the Government. We are, therefore, of opinion that the petitioner''s attack on the vesting of properties

described in Section 3(2)(i) of the Act is untenable.

25. The facts relating to the transfer of permits by the petitioner are as follows:--The petitioner entered into agreements for transferring 27 permits

inclusive of 3 permits covered by primary permits issued by the Pondicherry authorities. Leaving out Pondicherry permits out of consideration 24

primary permits wee sought to be transferred between 28-5-1971 and 18-6-1971. Joint applications were received in the office of the Regional

Transport Officer, Thanjavur. On 19-6-1971 Tamil Nadu Ordinance No. 6 of 1971 imposing a ceiling was promulgated. Under the Ordinance the

pending applications for transfer had to be disposed of under the principal Act as amended by the Ordinance. On 19-6-1971 the Chief Minister in

his Budget speech referred to nationalisation of all passenger transport undertakings having fifty or more bus permits as on 19th June, 1971. The

impugned enactment came into force on 7th December, 1971. We are, therefore, of opinion that the fleet operators owning fifty or more bus

permits on 19-6-1971, are governed by the impugned Act and the question of recognition of transfers in pursuance of the joint applications of the

transferor and transferee does not arise. We are told that in dealing with the applications for transfer the required formalities will in the normal

course take about three months and the applications made between 28-5-1971 and 19-6-1971 could not have been disposed of prior to the

coming into force of the Ordinance 6 of 1971 and the Act which replaced it. The transfers applied for, not having recognised on the date of the

coming into force of the Ordinance 6 of 1971, in our opinion, the petitioner must be deemed to be the owner of the permits which he sought to

transfer. The petitioner has, however, raised a contention that he had received substantial advances under the transfer and put the transferee in

possession of the said vehicles. In view of Section 59(1) of the Motor Vehicles Act it is a general condition attached to a stage carriage permit that

the permit shall not be transferable except with the permission of the transport authority which granted the permit and that the transferor shall not

without such permission confer on a transferee any right to use the vehicle. The petitioner''s contention that he has put the transferee in possession

of the vehicles is contrary to the provisions of Section 59 of the Act and that cannot be relied upon as a circumstance evidencing the transfer and

compelling the authorities to recognise the transfer. We are, therefore, of opinion that the attempted transfer by the petitioner cannot reduce the

strength of the Stage carriage fleet owned by him. The petitioner surrendered two of his permits on 24-7-1971 and lost one permit on 3-9-1971

as a result of the dismissal of his Writ Petition in the High Court. Both the abovesaid transactions, being subsequent to 19-6-1971 which is the

material date for the purpose of determining the strength of the fleet for acquisition under the Act, do not affect the extent of his holding. The

petitioner himself has admitted that on 19-6-1971 he was holding 52 stage carriage permits being the primary permit issued by the State of Tamil

Nadu.

26. One of the contentions raised by the petitioner is that the State Transport undertaking is being run inefficiently and the acquisition of new stage

carriage permits under the impugned enactment would only increase the inefficiency and that the efficiently managed undertakings by the five

operators, who fall within the purview of the impugned enactment, will after such acquisition be run inefficiently. That question does not arise for

consideration in the present Writ Petition as the impugned enactment relates only to acquisition. In the counter-affidavit filed by the Government it

is staged that u/s 15(2) of the Act the Government have to transfer the acquired properties in favour of a Corporation or a Company owned by the

Government and that the Government have already established Corporations called the ""Cholan Corporation"", the ""Pallava Corporation"" etc.

Further it is not open to the petitioner, who has mismanaged his Company and filed to pay wages to their employees and allowed arrears of tax

due to Government to accumulate, to lay claim of efficiency. Further before issuing the notification u/s 3(1) of the Act there is machinery for calling

upon the fleet operators to show cause why the stage carriages and other properties referred to in sub-section (1) and (2) of Section 3 should not

be acquired and it is only after consideration the objections of such fleet operators and after hearing them, the notification u/s 3(1) is issued. The

machinery under the Act provides ample judicial discretion in the Government to notify or not to notify any of the fleet operators. The scope of

enquiry, before notification under S. 3(1) of the Act is issued, is clear when the objects of the enactment are borne in mind.

27. The impugned enactment is not extra-territorial in its operation and the petitioner''s attack on this ground must, in our opinion, fail. It was next

contended that in the matter of determining the compensation payable in respect of the undertaking taken over by the Government and the

distribution of compensation, the transferee''s rights are not recognised. Section 2(k) defines ""person interested"" in relation to any acquired

property as including the fleet operator and any other person claiming, or entitled to claim, an interest in the compensation payable on account of

the acquisition of such property under this Act. Section 5(f) deals with the determination of any dispute as to the person or persons who are

entitled to the compensation and the apportionment of the amount amongst such persons. If the transferees have any claim to the compensation

amount, they as persons interested, may put forward a claim, which will be gone into by the arbitrator appointed u/s 5(c) of the Act. The

contention raised by the transferees of permits as also that of the transferors in this regard is, therefore, without any substance.

28. The petitioner has raised a further contention that the transferee has been totally ignored while contribution to Employees'' Provident Fund,

Payment of salary, wages, gratuity to workers are given preference. In our opinion, the provisions relating to distribution of compensation are

similar to those in a winding up of companies or distribution in insolvency and that they are perfectly valid and reasonable.

29. In W. P. 515 of 1972, a writ of Prohibition is asked for prohibiting the respondents from proceeding with the notice dated 3-3-1972 fixing the

hearing u/s 3(4) of the Act to 7-3-1972. As observed by us already, before a notification is issued u/s 3(1) of the Act, an enquiry by the

Government u/s 3(4) is contemplated. It is open to the petitioner at that enquiry to convince the Government that the Act is inapplicable to them, in

which case the impugned enactment will cease to apply to him. But, on the other hand, if they are unable to convince the Government, the

provisions of the enactment will be applicable to them. Further, the question whether the petitioner owns 50 or more permits is a disputed question

of fact which cannot be gone into in these proceedings. There is no total lack of jurisdiction in the Government to determine this question and

therefore there is no substance in the contention by the petitioner in W.P. 515 of 1972 seeking a writ of prohibition.

30. In the result, all the writ petitions are dismissed with costs, (one set). Counsel''s fee Rs. 250 in the main case (W.P. 395 of 1972).

31. Petitions dismissed.