**(1965) 04 CAL CK 0010**

**Calcutta High Court**

**Case No:** Appeal from Original Order No. 32 of 1965

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| Route Committee, Route No. 75 | | APPELLANT |
| | Vs | |
| State of West Bengal and Others | | RESPONDENT |

**Date of Decision:** April 29, 1965

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 19(1)(g), 226

**Citation:** 70 CWN 171

**Hon'ble Judges:** Bose, C.J; B.C. Mitra, J

**Bench:** Division Bench

**Advocate:** P.K. Banerjee, for the Appellant;S.C. Ray and Mrs. Priti Roy for the Respondents Nos. 1 to 3 and 7 and 8 and B.C. Dutt and Mrs. Manjuri Dutt for the Respondents Nos. 5 and 6, for the Respondent

**Final Decision:** Dismissed

**Judgement**

B.C. Mitra, J.

The appellant is a committee of the association of owners and permit holders of stage carriages in route No. 75 and the different bus routes in Calcutta and greater Calcutta. This committee claims to be interested in road transport and as such it claims to be aggrieved by a Notification issued by the State Government to put in two more buses in route No. 75. A Notification dated February 11, 1964, was issued by the State Government setting out therein the Draft Direction proposed to be issued to the State Transport Authority, West Bengal, in exercise of the powers under S. 43 (1) (iii) of the Motor Vehicles Act, 1939. The draft direction proposed putting in more buses in several routes, the permits for which are held by members of the appellant''s association.

2. It appears that route Nos. 3A and 3B of the Calcutta Region were naitonalised and the permits for running buses on these routes, held by the private owners, were cancelled by an order of the Regional Transport Authority, the effect of this

cancellation being that several privately owned buses which were exploiting the said two routes, were taken off the said routes. In order to rehabilitate the permit holders whose permits were thus cancelled, the State Government decided to put the buses of these permit holders which became idle, in consequence of the said order of cancellation, in alternative routes. In order to give effect to this decision the State Government issued the said Notification regarding Draft Directions to be issued to the State Transport Authority. The cancellation of the permits was made in exercise of the powers under S. 68F of the Motor Vehicles Act, 1939, and it became effective from March 5, 1962. The draft direction set out in the said Notification is as follows:--

The State Transport Authority, West Bengal, is hereby directed to issue direction to the Regional Transport Authorities of the Regions named in column (2) of the schedule below to grant stage carriage permits for alternative routes in accordance with the distribution list indicated in the schedule below, to persons whose permits for stage carriage for routes Nos. 3A and 3B of Calcutta Region have been cancelled with effect from the 5th March, 1962, by an order of the Regional Transport Authority of the said Region under clause (b) of sub-section (2) of section 68F of the Motor Vehicles Act, 1939 (Act 4 of 1939), in pursuance of the Scheme approved by the State Government under sub-section (2) of section 68 D of the said Act and published under notification No. 343-WT/B-77/61, dated the 17th January 1962, in the ''Calcutta Gazette Extraordinary'', dated the 17th January, 1962, on receipt of necessary applications from them and subject to fulfilment of all other conditions as are required to be fulfilled under the provisions of the Motor Vehicles Act, 1939 (Act 4 of 1939).

3. The contention of the appellant is that routes Nos. 73, 74 & 75, on which the buses of owners whose permits had been cancelled, are proposed to be put by the said draft direction, are already remunerative and if the draft directions are given effect to, it would cause further loss or injury to holders of permits in the said three routes. Being aggrieved by the said draft direction the appellant moved a petition under Art. 226 of he Constitution and obtained a rule nisi which was discharged by Banerjee, J., by a judgment and order dated November 17, 1964. This appeal is directed against this judgment and order dated November 17, 1964.

4. S. 43(1) of the Motor Vehicles Act, under which the draft direction was issued provides, inter alia, that the State Government having regard to four matters specified in Clauses (a), (b), (c) and (d), may from time to time issue direction to the State Transport Authority in regard to certain matters specified thereunder. Clause (iii) of sub-section (1) of S. 43 provides that such directions may be given regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercised of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68F. The draft direction challenged by the appellant in the writ petition was a direction in

terms of the said Clause (iii) of S. 43 (i).

5. Mr. P.K. Banerjee, learned advocate for the appellant, contended that the draft direction could be issued by the State Government, if it was satisfied that ail or one or more of the conditions specified in the Clauses (a), (b), (c) and (d) justified the issue of the draft direction. It was argued that unless in the Notification containing the draft direction, it was specified which of the said four conditions were considered by the State Government to be the justification for the issue of the Draft Direction, it was not possible for the appellant to lodge objections or suggestions as contemplated by the proviso to S. 43(1) of the Act. It was further argued that the statute had conferred upon the appellant the right to file objections and suggestions, the statute had also imposed upon the State Government the obligation not to publish the final Notification, unless objections and suggestions filed regarding the draft direction had been considered by the State Government in consultation with the State Transport Authority, and unless an opportunity of being heard was given to parties whose interest was affected. It was, therefore, argued that since in the Notification dated February 11, 1964, in which the draft direction was published, there was nothing to indicate as to which of the four conditions specified in Clauses (a) to (d) were considered to be sufficient, it was not possible for the appellant to file objections or suggestions as contemplated by the proviso to S. 43(1) of the Act. It was further argued that the result of the omission on the part, of the State Government to specify the grounds in Clauses (a) to (d) of S. 43(1) which were considered to be sufficient for the purpose of the draft direction was that the appellant was debarred from filing any valid objections and that being so, the Notification containing the draft direction is bad in law and has been published in violation of S. 43 of the Act or without complying with the provisions of the same. The result of the publication of the said Notification without complying with the requirement of S. 43 of the Act, it was argued, was that the Notification was entirely vague and indefinite in form, no indication had been given in the same as to which of the four conditions had been applied.

6. It is alleged in the petition that by reason of nationalisation of routes Nos. 3A and 3B, more than 55 stage carriages which were exploiting the said routes had been affected. It is further alleged that the permit holders of the said routes Nos. 3A and 3B do not hold any permit on routes Nos. 73, 74 and 75 and therefore, they cannot be said to hold permits which are existing. It is further alleged that some other association had moved writ petitions in this Court challenging the draft direction and obtained a rule and ad interim order of stay of issue of permit. It is next alleged that after the issue of the rule nisi and the interim stay, the rule was not pressed by the petitioner whose members exploited the route No. 75. The Notification which was the subject-matter of the writ petition out of which this appeal arises, was a new Notification. It is alleged that from this Notification it appeared that the permit holders who challenged the previous Notification had been given relief and the State Government was now trying to put in buses on some routes including the

routes controlled by the members of the appellant''s association who were left out of the previous Notification.

7. The next point argued by Mr. Banerjee was that at the hearing of the objections one B. N. Mukherjee, Secretary of the Regional Transport Authority, Calcutta, the respondent No. 7, who was not a member of the Tribunal, which heard the objections, sat just beside the Chairman of the Tribunal and participated in the deliberations of the Tribunal and expressed his views on the different objections. The substance of this contention is that a stranger had participated in the deliberations of the Tribunal and the Tribunal being a statutory Tribunal, discharging a statutory function, the participation by the stranger in its deliberations, made the proceedings before the Tribunal void.

8. In support of the above contention, Mr. Banerjee relied upon a Bench decision of this Court in Commissioner of Burdwan Division Vs. Mrinal Kanti Chatterjee and Another, . In that case the question of attendance at a meeting of the Regional Transport Authority by several strangers was considered. It was found that unauthorised persons attended the meeting not as mere visitors, but two of them deputised for members, and participated in the proceedings on their behalf, while a third who was neither a proxy nor a deputy, also participated in the proceedings. In the minutes it was recorded that the Addl. Superintendent of Police and the Vice-Chairman attended the meeting on behalf of the S.P., Hooghly, and Chairman, D.P., Hooghly. It was found that these persons attended not as visitors but persons who thought that they had a right to function as members of the authority and as proxies or delegates of the Superintendent of Police and the Chairman. It was held that the District Magistrate who was the Chairman of the statutory body thought that he was performing some executive function and was at libtety to call in his service chiefs, or authorities next in command, for advice and assistance. This, it was held, was irregular. The attendance of the Sub-Divisional Officer was held not to be justified as he was not a member of the Regional Transport Authority. In these circumstances the proceedings of the Regional Transport Authority was held not to be a proceeding of that body, but the proceedings of a body of miscellaneous persons, some of whom were members of the body, some deputies of members and one invitee. Relying upon this decision, Mr. Banerjee contended that in this case also B.N. Mukherjee, Secretary, Regional Transport Authority, who was not a member of the Tribunal hearing the objections or suggestions attended the meeting and participated in the deliberations. Respondent B.N. Mukherjee in his affidavit-in-opposition affirmed on July 21, 1964, has admitted that he attended the meeting, but denied that he participated in the deliberations. He has denied that he sat by the side of the Chairman and has alleged that he was present at the meeting as Secretary of the Regional Transport Authority, Calcutta Region, with official records as required as the matter that was to be dealt with concerned the Regional Transport Authority, Calcutta Region. According to him, he supplied such information as S.N. Roy, who was the Chairman required him to supply from the

records. S.N. Roy, the respondent No. 8, has also stated in his affidavit affirmed on July 21, 1964, that B.N. Mukherjee was present at the time of hearing of objections, but did not take part in the deliberations of the meeting nor did he give his views on the objections put-forward by the parties. He further stated that Mukherjee only replied to some queries made by him as to the position of the routes from his official records as the matter concerned the Regional Transport Authority, Calcutta Region, of which Mukherjee was the Secretary and was in possession of the records.

9. It will thus be clear that the allegations of the appellant about Mukherjee''s participation in the deliberations and giving his own views about, the objections are denied. An explanation has been given for Mukherjee''s presence at the meeting, which is not altogether without justification. No doubt, the matter which was discussed at the meeting concerned the different routes of the Calcutta Region and information as to routes from the records would have been material for the purpose of the deliberations. If such records were called for and consulted, the Chairman did only what was right and proper for him to do. But on the question of Mukherjee''s participation in the deliberations there is a denial by the two respondents mentioned above and having regard to this denial it is not possible to accept the appellant''s contention that Mukherjee''s participation in the deliberations was such as to make the decision of the Tribunal, void by reason of such participation. The decision mentioned above is entirely different on facts. It was found that strangers attended as deputies and delegates and another stranger was invited to attend the meeting. The minutes also recorded that these strangers attended the meeting and apart from the representatives and delegates a complete stranger was there. It was on these facts that this Court had held that the meeting was not a meeting of the Regional Transport Authority. But mere production of record, as was done in this case, cannot be said to vitiate the meeting of the Tribunal particularly, when it was dealing with a question of routes for which purpose the records were necessary.

10. Mr. Banerjee relied upon another decision of this Court in New Punjab Calcutta Transport Co. (Private) Ltd. Vs. Commissioner of Police, Calcutta, . The passage relied upon by Mr. Banerjee was to the effect that restriction on movement of traffic was to be imposed upon satisfaction as provided in S. 74 of the Motor Vehicles Act, and could not be imposed merely at the whim of the authorities. It was further held that unless it was shown that such power was not bona fide exercised the discretion should be left with the executive administration and the Court should not substitute its own view of public safety and convenience for the view of the executive administration. The Commissioner of Police had imposed certain restrictions regarding the movement of lorry and truck traffic in Burman Street and it was held that the exercise of the discretion by the Commissioner could not be inetrfered with. I do not see how this decision helps the appellant. The main question discussed in this case was in what circumstances the discreet on of the executive authority should be interfered with.

11. It was next contended by Mr. Banerjee that compliance with Clauses (a), (b), (c) and (d) was a condition precedent to the issue of directions to the State Transport Authority. If this condition precedent had not been fulfilled, no valid directions could be issue by the State Government under S. 43 and the publication of the said Draft Direction would be equally invalid and such Draft Direction could not be acted upon by the State Transport Authority. In support of this contention reliance was placed on a decision of this Court in (3) Calcutta Discount Co. Ltd. v. Income Tax Officer, AIR (1952) Cal. 606, in which my lord the Chief Justice (Bose, J., as he then was) in dealing with the jurisdiction of an Income Tax Officer to exercise the powers of reassessment under S. 34 of the Income Tax Act (1922) held, that the exercise of jurisdiction of the Income Tax Officer to reassess under S. 34 of the Income Tax Act was dependent upon a condition, namely, the was his personal belief or satisfaction that certain facts specified in the Section existed in respect of a particular assessment. So long as the Income Tax Officer honestly came to the conclusion that there were materials to justify taking action under S. 34 of the Act, the Court had no jurisdiction to interfere, even if the belief or conclusion was erroneous. If the Income Tax Officer made a wrong decision as to the existence of the condition precedent the remedy was by way of appeal as provided in the Income Tax Act and by stating a case to the High Court under S. 66 of the Act. To my mind this decision does not assist Mr. Banerjee inasmuch as there is no question involved in this appeal about non-compliance with the conditions in Clauses (a), (b), (c) and (d) under S. 43 (1) of the Motor Vehicles Act. Indeed the Notification quite clearly states that the Governor having regard to the matters enumerated in Sub-section (1) of Section 43 of the Act proposed to issue to the State Transport Authority the Draft Direction requiring the State Transport Authority to issue certain permits. There is, therefore, quite plainly fulfilment of the condition precedent. The grievance of the appellant in this appeal is that there is nothing stated in the Draft Direction to indicate as to which of the conditions mentioned in Clauses (a), (b), (c) and (d) was taken into consideration by the State Government. Mr. Banerjee contended that omission to specify the particular condition or any or all of them had prevented his client from filing objections or suggestions regarding the Draft Direction. In the Notification dated February 11, 1964, it is stated that "the Governor having regard to the matters enumerated in Sub-section (1) of Section 43 of the said Act, proposes to issue to the State Transport Authority, West Bengal, etc.". It is clear, therefore, that the State Government did in fact take into consideration such of the conditions specified in Clauses (a) (b), (c) and (d) as in its opinion applied to this case. It is, therefore not a case of non-fulfilment of a condition precedent as the Notification makes it clear that the condition precedent had in fact been fulfilled. The failure or omission of the State Government to specify which of the said conditions in Clauses (a), (b), (c) and (d) under S. 43(1) of the Act had been taken into consideration by the State Government in publishing the Draft Direction, is an entirely different matter. The contention of the learned advocate for the appellant, that there has been non-fulfilment of the condition precedent cannot, therefore, be upheld. The decision

in Calcutta Discount Co. Ltd. v. Income Tax Officer (supra) is, therefore, of no assistance to Mr. Banerjee.

12. Mr. S.C. Roy, learned advocate for the respondents 1, 2, 3, 4, 7 and 8, dealing with this aspect of the contentions on behalf of the appellant, argued that the omission to specify in the said Notification which of the conditions had been taken into consideration by the State Government, could not possibly prevent the appellant from filing objections. The objectors should have dealt with the conditions separately and in their objection they could have contended that certain of the conditions had no application and that the objections were filed regarding a particular condition, which in the opinion of the objectors applied to this case. It was further argued by Mr. Roy that the appellant should have written to the State Government asking for particulars as to which of the conditions had been taken into consideration, in publishing the Draft Directions. Mr. Roy argued that objections could have been filed on the basis that the State Government had taken into consideration all the four different grounds set out in Clauses (a), (b), (c) and (d) of S. 43(1) of the Act. It was next submitted that the terms of the said four Clauses made it plain as to which of them were relied upon or taken into consideration by the State Government. Clauses (b) and (c), it was argued had no application to this case, and the State Government must have considered the question having regard to the terms of Clauses (a) and (d). There is good deal of force in this contention on behalf of the said respondents. Failure or omission on the part of the State Government to specify the particular condition or conditions which were taken into consideration did not by any means debar, much less excuse, the appellant from filing the objections as contemplated by the proviso to S. 43 (1) of the Act. It cannot be overlooked that there is nothing in the Act which imposes upon the State Government the duty or the obligation to specify which of the four conditions mentioned in Clauses (a), (b), (c) and (d) had been taken into consideration and in the absence of such a statutory provision, it cannot be held that the Draft Directions issued by the State Government is bad or void because of failure or omission to specify the conditions relied upon or taken into consideration by the State Government.

13. Mr. B.C. Dutt, learned Advocate for the respondents Nos. 5 and 6, contended that the permits of various bus owners had been cancelled in exercise of the powers conferred by S. 68F (2) (b) of the Act. Owing to this cancellation of the permits, it was argued, arising out of a scheme of that nationalisation, the Draft Direction, had been published by the State Government as required by the proviso to S. 43(1) of the Act for grant of permits for alternative routes, as contemplated by S. 43 (1) (iii) of the Act. It was argued that before publication of the Draft Direction, the State Government was required to be satisfied about to take into consideration the matters specified in Clauses (a), (b), (c) and (d) of S. 43(1) of the Act. But, it was argued, while the State Government was bound to take the matters mentioned in the said four Clauses into consideration, the appellant was not entitled to raise any

objection regarding the matters which the State Government was required to take into consideration or regarding which the State Government must be satisfied. Subjective satisfaction, of the State Government regarding the matters specified in Clauses (a), (b), (c) and (d) of S. 43(1) of the Act is all that is required by the Statute. Such subjective satisfaction, it was argued, could not be made the basis of objection by the appellant or by any other party aggrieved by the proposal to grant permits for alternative routes. Mr. Dutt submitted that it was not open to the appellant or any of its members to contend that all or any of the matters specified in Clauses (a), (b), (c) and (d) had no application. So long as the State Government had taken those matters into consideration, and the Notification made it clear that those matters had in fact been considered by the State Government, it was submitted, that no objection could be raised on the ground that any or all the Clauses had no application.

14. It was next argued by Mr. Dutt that the appellant knew that the Draft Direction was published for grant of permits for alternative routes and that was the only matter regarding which the appellant claimed to be aggrieved. There was no difficulty or impediment to the appellant''s filing objections to the grant of permits for the alternative routes proposed, as all the particulars for such proposal had been set out in the Schedule to the Draft Direction. Mr. Dutt contended that there was, therefore, no substance in the appellant''s contention that it was unable to file objections to the Draft Direction as the State Government did not mention in the Notification as to which of the matters specified in Clauses (a), (b), (c) and (d) of S. 43(1) had been taken into consideration.

15. In my opinion, the contention on behalf of the respondents that failure or omission to specify which of the particular condition or conditions had been taken into consideration by the State Government in issuing the Draft Direction, did not in any manner prejudice the rights of the appellant to file objections, is well founded. The statute does not require the State Government to specify such a condition. Even if one or more of the conditions were specified, the appellant could not have raised any objection on the ground that the condition taken into consideration by the State Government was not a condition which applied to this case. Consideration of the matters set out in Clauses (a), (b), (c) and (d) of S. 43(1) is a matter entirely for the subjective satisfaction of the State Government. Then again the Schedule to the Draft Directions furnished to the appellant all the particulars which they might have required for the purpose of filing objections. The appellant knew that the proposal related to grant of permits for alternative routes to particular individuals with regard to particular buses. The routes for which the permits were to be issued were known to the appellant. The object, the purpose, the manner, the region, the names of persons, registration numbers of stage carriages and the number of stage carriage permits proposed to be granted, were all known to the appellant and it could have, if it wanted to, formulated its objections and suggestions as contemplated by the proviso to S. 43 (1) of the Act. The objections and suggestions

contemplated by the proviso to S. 43 (1) of the Act are objections and suggestions regarding matters set out in Clauses (i), (ii), (iii) and (iv) of S. 43 (1) of the Act. No explanation has been offered by the appellant as to why it could not file its objections, although it was aware of all the particulars mentioned above regarding the grant of alternative routes and although it was mentioned in the Notification that the Draft Direction was proposed to be issued in exercise of powers conferred by Clauses (iii) of Sub-section (1) of Section 43 of the Motor Vehicles Act, 1939.

16. Before parting with this aspect of the matter, I should refer to a decision of this Court in Civil Revision Cases Nos. 3001 and 3002 of 1959 with Civil Revision Case No. 3633 of 1959 (4) (Prosad Chandra Koyal, Kunuram Mondal and Ors. v. State of West Bengal and Ors.), (unreported) which was relied upon by Mr. Banerjee. In that case Banerjee, J., was dealing with a petition under Art. 226 of the Constitution and considered the question of objections to be filed by interested parties who were likely to be affected by acquisition of land under the West Bengal Agriculral Lands and Fisheries (Acquisition and Resettlement) Act. 1958. It was held that unless the real purpose of acquisition was stated in the Notification, it was difficult for any objector to make a proper objection thereto. In that case the State Government had only stated that the acquisition was necessary because it appeared that the cultivation and protection of agricultural land in certain areas was affected or was likely to be affected injuriously by the existence of a fishery. This decision does not assist the appellant at all as in the appeal now before us, it was made clear in the Notification that the Draft Direction was issued in exercise of the powers conferred upon the State Government by S. 43 (1) (iii) of the Act, which dealt with the grant of permits for alternative routes to persons in whose case existing permits were cancelled. The object of the Draft Direction, therefore, was made quite plain by the Notification itself. There was no undisclosed purpose or object as was the case in the Civil Revision Cases mentioned above, in which it was found that the State Government had an undisclosed purpose, namely, that the cultivation of agricultural lands in a neighbouring Mouza was likely to be injuriously affected.

17. The next point urged by Mr. Banerjee was that the State Government had no jurisdiction to select particular individuals for grant of permit on a particular route. Mr. Banerjee contended that the Schedule to the Draft Direction showed that the State Government had selected particular individuals, with registration numbers of particular buses, for grant of permits for particular routes. This Mr. Banerjee contended could not be done. He argued that applications should have been invited from all parties interested and thereafter selection of particular individuals should have been made, not by the State Government, but by the Regional Transport Authority. This selection was to be made under Sections 47 and 57 of the Motor Vehicles Act. Mr. Banerjee argued that instead of leaving the selection to the Regional Transport Authority the State Government had itself made the selection and had specified that a particular individual, having a particular bus, should be given a permit for a particular route.

18. There is hardly any force in this contention, as S. 43(1) provides that the State Government may from time to time by Notification in the Official Gazette, issue directions to the State Transport Authority in the matter of grant of permits for alternative routes or areas to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of section 68F of the Motor Vehicles Act.

19. Mr. S.C. Roy raised a preliminary objection to the petition, namely, that the petition was not signed and dated by the petitioner. This point has been raised in paragraph 3(a) of the affidavit-in-opposition of Tripati Prokash Nandy affirmed on July 24, 1964. There is no substance in this contention as the petition has in fact been signed by the Secretary of the Route Committee of Route No. 75. It was next contended by Mr. Roy that there was nothing to show that the Secretary was authorised by the Committee to affirm the affidavit. This contention also is equally without any substance. In the affidavit verifying the petition Mahendra Mohon Ghose has stated that he was the Secretary of the petitioner''s Association. This statement, in my view, is sufficient compliance with the requirement of the Rules regarding petitions under Art. 226 of the Constitution.

20. It was next urged on behalf the said respondents that the proposal to grant permits for alternative routes was covered by Chapter IVA of the Motor Vehicles Act and therefore Sections 47 and 57 which are in Chapter IV of the Act have no application and cannot be invoked for the purposes of challenging the Draft Direction. Section 47 deals with the procedure to be followed by the Regional Transport Authority in considering an application for stage carriage permits and Section 57 deals with the procedure in applying for and granting of permits. Mr. Roy referred to Section 68B which provides that provisions of Chapter IVA and Rules and Orders made thereunder should have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or in any other law for the time being in force. Therefore, it was argued that the provisions in Chapter IVA override the provisions in Chapter IV of the Act. Chapter IVA deals with special provisions relating to State Transport undertakings. The various Sections under this Chapter deal with preparation and publication of schemes and also such ancillary matters as cancellation of existing permits, payment of compensation, issue of permits etc. The Draft Direction published by the State Government, it was argued, was regarding the grant of permits for alternative routes to persons in whose case the existing permits were cancelled as provided in S. 43 (1) (iii). But once the object of the direction is specified to be an object as contemplated by S. 43(1) (iii), all the provisions in Chapter IVA become operative and special provisions in that Chapter override all the provisions in Chapter IV for grant of permit. It was argued that the stage carriage permits of private owners of buses in routes Nos. 3A and 3B were cancelled in exercise of powers under S. 68F(2) (b). It was clear, therefore, it was argued, that the powers conferred on the authorities under Chapter IVA were invoked and exercised. There is good deal of force in this contention of the learned

Advocate for the respondents. S. 43(1) of the Act has conferred upon the State Government the power to issue directions regarding grant of permits for alternative routes in those cases where the existing permits were cancelled. This cancellation of existing permits was made in exercise of the powers under S. 68F (2) (b). Therefore, the procedure laid down in Sections 47 and 57 of the Act have no application whatsoever in the matter of grant of permits to the owners of buses of routes Nos. 3A and 3B.

21. In support of this contention, reliance was placed by Mr. Roy on a decision of the Madras High Court reported in (5) AIR (1963) Mad. 265. In that case the question discussed was whether S. 68G(2) of the Act violated Articles 14 or 19 (1) (g) of the Constitution. It was held that the power to grant alternative permit to a displaced permit-holder under S. 68G(2) was not an arbitrary power violative of Art. 14 of the Constitution. This aspect of the decision, however, has no application to the appeal now before us. It was, however, also held in that case that having regard to the terms of S. 68B of the Act, the provisions of S. 47 and S. 57 of the Act were excluded. It was further held that the offer of alternative route to a displaced permit-holder is purely administrative act and the State Government had the jurisdiction to issue Orders under s. 43 (1) (d) (iii) for offer of alternative routes to be made to displaced permit holders. Relying upon this decision it was argued that publication of the Draft Direction in the said Notification is an administrative act and not a quasi judicial act and such publication cannot be challenged in a writ petition for the issue of a writ of certiorari for quashing the said Notification. This contention on behalf of the respondents seems to us to be well founded.

22. Learned advocate for the respondents relied upon a decision of the Bombay High Court reported in (6) Amarnath S. Nanda Vs. State Transport Authority and Another, . But that decision, has no application as the question considered was one of regulation of fares to be charged by taxi drivers. The facts in that case are entirely different from the facts with which we are concerned in this appeal.

Reliance was also placed on a decision of the Allahabad High Court reported in (7) Regional Transport Authority and Another Vs. Sri Kashi Prasad Gupta and Others, . In that case the question considered was whether S. 68G (2) of the Act conferred powers on the Regional Transport Authority to offer a displaced operator a permit for an alternative route or whether such a power has had to be exercised subject to the provisions in S. 47 and S. 48 of the Act. It was held that in the matter of grant of permit to displaced permit-holders the State Government or the Regional Transport Authority was not bound to comply with the requirement of Chapter IV of the Act. It was further held that the power of the Regional Transport Authority to offer, and upon acceptance, to grant a permit for an alternative route to an operator whose permit had been cancelled under S. 68F was to be found only in S. 68G (2) and also that the provisions of that sub-section must by virtue of S. 68B have effect notwithstanding anything inconsistent therewith to be found in Chapter IV.

23. In my opinion, this contention of the respondent that in the matter of granting permits for alternative routes to displaced permit-holders, the State Government could exercise the powers conferred under Chapter IVA and was not bound to comply with the requirement of the provisions in Chapter IV, is well founded. The scheme of the Act makes the position quite plain by providing that the provisions in Chapter IVA would override the provisions in Chapter IV in the matter of Grant of permit to displaced permit-holders.

24. Mr. B.C. Dutt, learned Advocate for the respondents Nos. 5 and 6, contended that the proposal to grant permits as mentioned in the Draft Direction was consequential to and in implementation of, a scheme of nationalisation of road transport which has become final. This scheme was approved by the State Government under S. 68D (2) of the Act and was published in the Calcutta Gazette Extraordinary dated January 17, 1962. This scheme has not been challenged, and not having challenged the scheme which has, therefore, become final, it was not open to the appellant to question the proposal to grant stage carriage permits to his clients. This argument, in the manner in which it has been advanced, cannot be accepted. The scheme no doubt has become final. But if in implementing the scheme mandatory provisions of the statute are violated or rules of natural justice ignored, this Court can interfere by issuing appropriate writs or orders under Art. 226 of the Constitution. Mere finality of the scheme does not by itself deprive an aggrieved party of its right to move this Court under Art. 226 of the Constitution, if a petition for a writ is otherwise competent. It has, therefore, to be seen if in law the appellant is entitled to relief under Art. 226 of the Constitution. It is no doubt true that stage carriage permit-holders in the three routes Nos. 73, 74 and 75 affected by the scheme of nationalisation will be prejudiced if permits are granted in accordance with the Distribution List in the Schedule to the Draft Direction. It is no doubt also true that the existing permit-holders in the said three routes have the right to exploit the routes to the exclusion of all others, until fresh permits are granted for exploitation by others of the same routes. But mere injury to the interest of the members of the appellant is not enough to hold that the proceedings under the statute for grant of alternative routes arising out of a scheme of nationalisation are bad and should, therefore, be quashed.

25. It was next contended by Mr. Dutt that the issue of the Draft Direction by the State Government was an administrative act and it could not be challenged by the appellant in a writ petition. As I have already dealt with the question earlier in this judgment, it is not necessary for me to revert to this question once again.

26. It was next contended by Mr. Dutt that the Motor Vehicles Act, 1939, was a complete Code and S. 64 of the Act made provision for appeals by any person aggrieved on any of the matters specified in that Section. He argued that S. 64 of the Act provided for the remedy of the grievance of a party who should, therefore, pursue that remedy and not come to this Court with a writ petition for relief. Mr.

Dutt, however, frankly conceded, and I think rightly, that no appeal could have been preferred by the appellant regarding the proposal to prant permits for alternative routes, as such a matter is not the of the matters specified in S. 64 of the Act.

27. The next contention of Mr. Dutt was that the presence of B.N. Mukherjee at the meeting for the purpose of production of records did not amount to participation by him at the deliberations of the meeting. He argued that B.N. Mukherjee, who was the Secretary of the Regional Transport Authority, was present at the meeting only for the purpose of production of certain records. He had furnished some information to the Chairman of the meeting. But that did not amount to his participation in the deliberations so as to make the resolution void. Mr. Dutt further argued that the decision of this Court reported in 63 C.W.N. 1, which I have discussed earlier in this judgment, had no application to this case as the facts in that case were entirely different. There is good deal of force in this contention of Mr. Dutt. There is no evidence that B.N. Mukherjee took part in the deliberations of the meeting or that he did in any way influence the decision. Both B.N. Mukherjee and S. N. Roy have affirmed affidavits denying that the former had participated in the deliverations of the meeting. I cannot for these reasons uphold Mr. Banerjee''s contention that the decisions arrived at at the meeting of the Tribunal were bad because B.N. Mukherjee attended the meeting and participated in the deliberations.

28. I should now refer to the several other decisions relied upon by Mr. Dutt in support of his contentions. Reliance was placed upon a decision of the Madras High Court reported in (8) AIR (1957) Mad. 536, for the proposition that the Draft Direction issued by the Government was an administrative order and could not be quashed by a writ of certiorari. The next case relied upon is a decision of the Supreme Court reported in (9) (1952) S.C.A. 287 in which it was held that however extensive the jurisdiction of this Court might be under Art. 226, it was not so wide or large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made. It was further held that the grant of a permit was entirely within the discretion of the Transport Authorities and no one was entitled to a permit as of right even if he satisfied all the prescribed conditions. Reliance was also placed on another decision of the Madras High Court reported in (10) AIR (1955) Mad. 205, in which it was held that a person aggrieved by the order of the Regional Transport Authority had a remedy by way of appeal under S. 64 of the Act and also by way of a revision under S. 64A and if he had not availed the Regional Transport Authority should be dismissed ''in limine''. This himself of the remedy, his petition under Art. 226 to quash the order of decision is of no assistance to Mr. Dutt as he conceded that in the instant case the appellant had no right of appeal under S. 64 of the Act. Mr. Dutt next relied upon a decision of the Supreme Court reported in (11) C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, . In this case it was held that the income tax Act provided a complete machinery for relief to an aggrieved party in respect of

improper orders passed by the income tax Authorities and such an aggrieved party could not be permitted to abandon the remedy provided by the income tax Act and to invoke the jurisdiction of the High Court under Art. 226. This decision also is of no assistance to Mr. Dutt for the reasons mentioned earlier. Reference was also made on the same question to a decision of the Punjab High Court reported in (12) Khem Chand Vijay Kumar Vs. J.S. Malhotra and Another, .

29. Before proceeding to consider the other decisions relied upon by Mr. Dutt, I should deal with one other contention of Mr. Banerjee, learned Advocate for the appellant, that the decision of the Allahabad High Court in Kashi Prasad Gupta Vs. Regional Transport Authority, Gorakhpur and Others, , in which Tandon, J., held that the offer for alternative route should be made in the scheme of nationalisation itself, should be accept by us as a correct proposition of law, although this decision was overruled by a Division Bench of the Allahabad High Court in Regional Transport Authority and Another Vs. Sri Kashi Prasad Gupta and Others, . Mr. Banerjee''s contention was that the judgment of Tandon, J., was followed by a Division Bench of the Rajasthan High Court in Abdul Gafoor and Others Vs. State of Rajasthan and Others, . Mr. Banerjee contended that this Court was not bound to follow the said Bench decision of the Allahabad High Court which overruled the decision of Tandon, J., and since the judgment of Tandon, J., was accepted by the Rajasthan High Court, this Court should accept the statement of law as laid down in Kashi Prasad Gupta Vs. Regional Transport Authority, Gorakhpur and Others, and Abdul Gafoor and Others Vs. State of Rajasthan and Others, . I should at once point out, however, that the judgment of Tandon, J., that the offer of an alternative route should be provided for in the scheme itself, was not followed High Court in Abdul Gafoor''s case (supra). Indeed the Division Bench of the Rajasthan High Court expressed by the Division Bench of the Rajasthan its dissent from the observations of Tandon, J., in the following terms:--"It has to be borne in mind that it may not be possible in all cases to provide for an alternative route in the Scheme itself. An attempt to provide an alternative route to displaced operators is, strictly speaking, not an intrinsic part of the scheme itself. The question arises incidentally in connection with the payment of compensation to displaced operators for the period for which their existing permits stand cancelled or modified by reason of the scheme. They may be given compensation or they may be provided with an alternative route. This consideration can, therefore, arise even at a subsequent stage after the scheme has been finalised and put through.", It will be clear from these observations that the Division Bench of the Rajasthan High Court did not accept Tandon, J.''s, statement of the law to be correct and did indeed express its dissent in the terms mentioned above. It is not necessary for us to express any views on the other questions discussed in the Allahabad decision as those questions are not involved in the appeal now before us. The question raised in the Allahabad decision was whether the Notification for a scheme of nationalisation of road transport published under S. 68C of the Act was defective on the ground that it was not prepared or published by the State

Transport undertaking and the opinion regarding nationalisation was not the opinion of the Regional Transport Authority, but was the opinion of the State Government. This question is not involved in the appeal now before us and for that reason it is not necessary for us to deal any further with the decisions of the Allahabad High Court. The other questions discussed by the Division Bench of the (7) Allahabad High Court in Regional Transport Authority and Another Vs. Sri Kashi Prasad Gupta and Others, , have been discussed by me earlier in this judgment and I need say nothing more on those questions.

30. On the question of the presence of B.N. Mukherjee at the meeting, Mr. Dutt referred to a decision of the Assam High Court reported in Sudhir Kumar Braua Vs. State Transport (Appellate) Authority and Others . As I have already held that the presence of B. N. Mukherjee at the meeting did not amount to his participation in the deliberations, it is not necessary for me to go into that question again. Mr. Dutt also referred to a decision of the Punjab High Court and also a decision of the Rajasthan High Court reported in Ambala Bus Syndicate Private Ltd. Vs. The State of Punjab and Others, , and General Motor Bus Service, Jaipur Vs. Regional Transport Authority, Jaipur and Another, . But the questions involved in those decisions have no application to the issues involved in the appeal now before us. Mr. Dutt also relied upon a decision of the Supreme Court reported in Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, , in support of his contention that in forming its opinion under Clauses (a), (b), (c) and (d) of S. 43(1) of the Act, the State Government was not acting judicially. This decision also has no bearing on the issues involved in this appeal as the contentions raised on behalf of the appellant were based not on the ground whether the Government acted judicially or otherwise, but on the ground that in the Draft Direction published by the State Government, there is nothing to indicate as to which of the four grounds mentioned in Clauses (a), (b), (c) and (d) had been taken by the State Government into consideration. That being so, the question of judicial or administrative determination by the State Government has no bearing in this appeal.

31. Before concluding I should refer to the conduct of the appellant who claims to be aggrieved by the publication of the Draft Direction. It was strenuously contended on behalf of the appellant that it could not file its objections as it was not stated in the Draft Direction as to which of the Clauses (a), (b), (c) and (d) of S. 43(1) of the Act had been taken into consideration by the State Government. But it seems to me that there is hardly any substance in this contention. Even assuming that the appellant was under the impression that it could and should file its objections on the basis of Cls. (a), (b), (c) and (d), there was no justification whatsoever for not filing any objections at all. It could have, and it should have filed its objections, if indeed it had any, on any of the Clauses which it thought to be appropriate. If its objections were overruled, it would then have been open to it to contend that it was misled by reason of the omission of the State Government to specify in the Draft Direction as to which of the Clauses had been taken into consideration. But it filed no such

objections. The appellant now seeks excuse for not filing its objections in the failure of the State Government to specify the particular Clauses which was considered by it to be sufficient for the purpose of issuing the draft Direction. This inaction on the part of the appellant, without more, is enough to disentitle it to any relief under Art. 226 of the Constitution. But as I have already held that formation of opinion under Clauses (a), (b), (c) and (d) of S. 43(1) of the Act is a matter of subjecitve satisfaction of the State Government and no objections could be raised by an aggrieved party on either of the said grounds, the contention of Mr. Banerjee that the particular ground on which the State Government formed its opinion should have been specified in the Gazette Notification, must fail.

For the reasons mentioned above, this appeal fails and is accordingly dismissed. Each party to pay its own costs.

Let the operation of this order remain in abeyance for three weeks from today.

Bose, C.J.

I agree.