A RAM KRISHNA VERMA ETC. ETC.

v.

STATE OF U.P. AND ORS. ETC. ETC.

MARCH 31, 1992

B [N.M. KASLIWAL AND K. RAMASWAMY, JJ.]

Motor Vehicles Act 1939 :

Sections 68-C, 68-D and 68-F Motor Vehicles Act, 1988—Sections 80 and 98—Grant of permit to private operators on nationalised routes—Draft scheme published under old Act—Private operators obtaining permits under new Act for routes covered by the scheme—Grant of permit to any other operator for the routes covered by the scheme—Whether illegal and without jurisdiction—Whether corridor protection permissible.

D *Constitution of India 1950 :*

Articles 136, 141, 142 and 226 Court should neutralise any undeserved and unfair advantage gained by party invoking its jurisdiction.

Precedents—Practice and Procedure—Supreme Court two Judge bench E *not to over rule decision of three judge bench.*

Administrative Law.

Natural Justice—Principle of right to hearing—Forfeiture of—When F *party obtains undue advantage by protracting proceedings and nullifying objective.*

To nationalise the Saharanpur - Shahdara - Delhi route a draft scheme dated 26th February, 1959 was published, and the approved scheme published on September 29, 1959 was quashed by the high Court G **by judgments dated October 31, 1961 and February 7, 1962 as against 50 operators and being upheld against other 50 operators. The State Govt. was permitted to given fresh hearing to the 50 objectors, on the basis of the original proposal which was upheld in *Jeewan Nath Bahl & Ors.* v. *State of U.P.***

H **Out of the 50 operators some filed successive suits and obtained**

injuction from different courts scuttling the hearing and keeping it pending for well over 25 years. A

A writ petition was filed in this Court assailing, that the delay in approving the scheme amounts to an abuse of process of law, and that public interest thereby suffered, and the Court held in *Shri Chand etc.* v. *Govt. of U.P. & Ors.*, [1985] Suppl. 2 SCR 688 that the delay of 26 years in B disposing of the objections resulted in violation of Articles 14 and 19(1)(g) of the Constitution, and accordingly quashed the draft scheme dated February 26, 1959. The Government was directed to frame the scheme afresh, if necessary.

C Pursuant thereto the U.P. State Road Corporation published the draft scheme on February 13, 1986. While it was pending the Motor Vehicles Act 59 of 1988 came into force with effect from July 1, 1989. Bulandshahr to Delhi route was also nationalised in the approved scheme published in the State Gazette dated September 27, 1986.

D After the 1988 Act came into force, the respondents applied for and were granted permits for Saharanpur to Ghaziabad via Shahdara routes etc.

The appellants filed the writ petitions in the High Court and the same were dismissed by judgment dated July 23, 1990. The draft scheme E published in 1986 was held by the hearing authority to have been lapsed by operation of Section 100(4) of the Act.

In the writ petition filed by the S.T.U. the High Court by its judgment dated March 16, 1990 held that the draft scheme stood lapsed within one F year from the date of the publication of the draft scheme, and accordingly upheld the order of the hearing authority. S.L.P. No. 6300/91 was filed against this judgment.

Special Leave Petition Nos. 9701/90, 9702/90 and 2083/91 were filed against the High Court's judgment dismissing the writ petitions in which G grant of permits under Section 80 of the Motor Vehicles Act on the Muzaffarnagar–Chausana; Ghaziabad to Shahdara, Saharanpur to Ghaziabad covered and partly overlapping nationalised routes were questioned.

On the questions : (1) what is the effect of *Shri Chand etc.* v. *Govt.* H

A of U.P. over Jeevan Nath Bahl & Ors. v. State of U.P. and (2) whether the draft scheme dated February 13, 1986 stood lapsed under Section 100(4) of the Act.

Granting special leave and allowing the appeals, the Court,

B HELD : 1(a) Consistent law laid down by this Court is that draft scheme under Section 68-C and approved under Section 68-D of Chapter IVA of the Repealed Act (Chapter VI of the Act), is a law and it has overriding effect over Chapter IV of the repealed Act (Chapter V of the Act). It operates against everyone unless it is modified. It excludes private operators from the C area or route or a portion thereof covered under the scheme except to the extent excluded under that scheme itself. The right of private operators to apply for and to obtain permits under Chapter IV of the repealed Act (Chapter V of the Act) has been frozen and prohibited. [389B-C]

(b) The nationalisation of Saharanpur - Shahdara - Delhi route D approved and published on September 29, 1959 became final and to that extent it cannot be said to have been quashed by this Court in *Sri Chand's* case. The approved scheme is law operating against everyone except 50 objectors/operators and the writ issued by this Court cannot have the effect of annuling the law. What was quashed and issue of fresh draft E scheme pursuant thereto, relate to only of orginal draft scheme operative against 50 objectors/operators and no more. Even on principle, the decision of a Bench of two Judges cannot have the effect of overruling the decision of a Bench of three Judges. The fresh draft scheme under Section 68-C dated February 13, 1986 must, therefore, be construed to be only in relation to 50 existing operators as per the directions that ultimately F emerged in *Jeevan Nath Bahl's* case. [389D-E]

Mysore State Road Transport Corporation. v. *Mysore State Transport Appellate Tribunal,* [1975] 1 SCR 615; *Adarsh Travels Bus Service* v. *State of U.P. & Ors.,* [1985] Suppl. 3 SCR 661; *H.C. Narayanappa & Ors.* v. *State* G *of Mysore & Ors.,* [1960] 3 SCR 742; *Nehru Motor Transport Co-op. Soc. & Ors.* v. *State of Rajasthan & Ors.,* [1964] 1 SCR 220 and *S. Abdul Khader Saheb* v. *Mysore Revenue Appellate Tribunal & Ors.,* [1973] 1 SCC 357, referred to.

2(a) On harmonious construction of ss.217(2)(e) and 100(4) of the H Act, the draft scheme published under s. 68-C of the Repealed Act would

stand lapsed only if it is not approved within one year from the date when the Act came into force i.e. with effect from July 1, 1989 by which date it was pending before the hearing authority and one year had not expired. The hearing authority, therefore, wrongly concluded that the draft scheme stood lapsed. The High Court also equally committed illegality following its earlier view which stood overruled by this court in *Krishana Kumar's* case. The view of the High Court and the hearing authority is therefore clearly illegal. [389H-390B]

Krishna Kumar v. *State of Rajasthan & Ors.*, [1991] 4 SCC 258, referred to.

(b) The nationalisation of Saharanpur - Shahdara - Delhi route by publication of the approved scheme on September 29, 1959 is operating to the total exclusion of every private operator except U.P. State Road Transport Corporation and 50 operators including the appellants whose objections were upheld by the High Court in the first instance and merged in the judgment of this Court in *Jeevan Nath Bahl's* case. [390C]

(c) Under Section 80 of the Act no private operator has right to apply for and obtain permits to ply the stage carriages on the approved or notified route/routes or areas or portion thereof. The grant of permits to the private operators on the respective routes or part, or portion thereof to provide transport service is therefore clearly illegal and without jurisdiction. [390E]

Mithlesh Garg & Ors. v. *Union of India & Ors.*, [1992] 1 SCC 168, referred to.

(d) By operation of Section 98 of the Act, Chapter VI overrides Chapter V and other law and shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for the time being inforce or any instrument having effect by virtue of such law. The result is that even under the Act the existing scheme under the repealed Act or made under Chapter VI of the Act shall have over-riding effect on Chapter V notwithstanding any right given to private operators in Chapter V of the Act. No corridor protection to private operators is permissible. [390G-391A]

(e) The 50 operators including the appellants/private operators have been running their stage carriage by blatant abuse of the process of the

court by delaying the hearing as directed in *Jeevan Nath Bahl's* case and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after September 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. [391D]

(f) While exercising its jurisdiction this Court would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellant in dragging the litigation to run the stage carriages on the approved route on area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated February 26, 1959. [391F]

(g) Moreover, since this court in *Jeevan Nath Bahl's* case upheld the approved scheme and held to be operative the hearing of objections would be a procedural formality with no tangible result. Therefore, the objections outlived their purpose. They are, therefore, not entitled to any hearing before the hearing authority. [391G-H]

Grindlays Bank Ltd. v. *Income Tax Officer & Ors.*, [1980] 2 SCC 191, referred to.

3. The grant of permits to all the respondents/private operators and respondents Nos.7 to 28 in S.L.P. No. 9701/90 under Section 80 of the Act or any others on the respective routes, parts or portions of the nationalised routes of February 13, 1986 draft scheme are quashed. The hearing authority shall lodge the objections of the 50 operators including the appellants in the appeals. The competent authority shall approve the draft scheme of 1986 within a period of 30 days and publish the approved scheme in the gazette. The permits granted to the 50 operators or any others shall stand cancelled from that date, if not having expired in the meanwhile. No permits shall be renewed. Action should be taken by respondents 3 to 4 in S.L.P. No. 9701/90 to see that all the permits granted to the 50 operators including the appellants are seized and cancelled. The U.P. State Transport Corporation shall obtain the required additional permits, if need be, and put the stage carriages on the routes to provide transport service to the travelling public immediately on publication of the approved draft scheme in the State Gazette. [392A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1198, 1199, 1200 & 1201 of 1992. A

From the Judgment and Orders dated 2.5.1990, 16.3.1990 & 5.10.1990 of the Allahabad High Court in W.P. No. 212/90, C.M.W.P. No. 7735/89 C.M.W.P. No. 15865/86 and C.M.W.P. No. nil of 1990.

B

Raja Ram Aggarwal, H.N. Salve, V.J. Francis, B.B. Singh, Gaurav Jain, N.K. Goel, Ms. Abha Jain, Raju Ramachandran and Sunil Kr. Jain for the Appellants.

B.S. Chauhan and Mrs. Rani Chhabra for the Respondents.

C

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Special leave granted.

These four cases have behind chequered history of the draft scheme dated February 26, 1959 published under Sec. 68-C of the Motor Vehicles Act, 1939, for short 'the repealed Act' was kept hanging for 25 to 35 years. The draft scheme dated 26th February, 1959 was published to nationalised Saharanpur - Shahdara - Delhi route. The approved scheme published on September 29, 1959 was quashed by the Allahabad High Court by judgments dated October 31, 1961 and February 7, 1962 as against 50 operators and was upheld against other 50 operators. It was further held that the State Govt. was at liberty to give fresh hearing to the 50 objectors on the basis of the original proposal which was upheld by this court in *Jeewan Nath Bahl & Ors.* v. *State of U.P.,* (C.A. No. 1616 of 1968 dated April 3, 1968), observing thus :

D

E

F

> "The effect of the order passed by the High Court in the two groups of writ petitions was clearly that *the scheme in its essence was not affected,* but it was directed that it was not liable to be enforced against the 32 petitioners who applied to the High Court in the first round of petitions and against 18 petitioners in the second group of petitions. If that be the true effect of the order there is in our judgment, *a scheme in existence which must have the statutory operation contemplated by Section 68-F of the Motor Vehicles Act.*"

G

The record discloses that out of 50 operators some of them filed H

A successive suits and obtined injuction from different courts scuttling the hearing and kept pending for well over 25 years. Shri Chand and Others filed Writ Petition No. 11744 of 1985, etc. in this court assailing that the delay in approving the scheme amounts to abuse of process of law and public interest thereby suffered. By judgment in *Shri Chand, etc.* v. *Govt. of U.P. & Ors.*, [1985] Suppl. 2 SCR 688, this court held that the delay of B 26 years in disposing of the objections resulted in violation of Arts. 14 and 15(l)(g) of the Constitution. The draft scheme dated February 26, 1959 was accordingly quashed. It directed the Govt. to frame the scheme afresh, if necessary, Pursuant thereto the U.P. State Road Corporation Published the draft scheme on February 13, 1986. While it was pending the motor C Vehicles Act 59 of 1988, for short 'the Act' came into force with affect from July 1, 1989. Bulandshahr to Delhi route was also nationalised in the approved scheme published in the State Gazette dated September 27, 1956.

After the Act came into force, the respondents applied for and were D granted permits for Saharanpur to Ghaziabad via Shahdara routes etc. The appellants filed the writ petitions in the High Court of Allahabad at Lucknow questioning the validity thereto which was dismissed by judgment dated July 23, 1990. The draft scheme published in 1986 was held by the hearing authority to have been lapsed by operation of Sec.100(4) of the Act. In the Writ petition filed by the S.T.U. the High Court by its judgment E dated March 16, 1990 held that the draft scheme stood lapsed within one year from the date of the publication of the draft scheme and accordingly upheld the order of the hearing authority against which the appeal (S.L.P. No. 6300/91) wad filed. Special Leave petition Nos. 9701/90, 9702/90 and 2083/91 arise against the High Court's Judgment dismissing the writ peti- F tions in which grant of permits under s. 80 of the Act on the Muzaffarnagar - Chausana; Ghaziabad to Shahdara; Saharanpur to Ghaziabad covered and partly overlapping nationalised routes were questioned. Thus these appeals by special leave.

In *Jeevan Nath Bahl's* case (C.A. No. 1616/68), this court held that G the scheme was not affected and the true effect of the orders passed by the High Court in respect of 50 operators was deduced thus, "in our judgment a scheme is in existence which must have the statutory operation contemplated by Sec. 68-F of the Motor Vehicles Act ....." It was further held that the judgment of the High court "was only intended to prohibit H the enforcement of the scheme against two groups of petitioners, who had

approached the High Court challenging the validity of the orders sanctioning the scheme". The result is that the scheme would operate as against every other person other than the fifty operators and the S.T.U. has the exclusive right to ply its vehicles on the notified route. 50 operators not only continuted to ply there vehicles till expiry of their permits but managed to ply till date.

In *Mysore State Road Transport Corporation* v. *Mysore State Transport Appellate Tribunal,* [1975] 1 SCR 615, this court held thus :

> "Any route or area either wholly or partly can be taken over by a State Undertaking under any scheme published, approved and notified under the provisions of Ch. IV-A of the Act inserted by Sec. 62 of Act 100 of 1956. If, therefore, the scheme prohibits private transport owners to operate on the notified area or route or any portion therefore, the Regional Transport Authority cannot either renew the permit of such private owners or give any fresh permit in respect of a route which overlaps the notified route. In considering the question whether when one party has monopoly over a route, a licence can be granted to any other party over any part of that route, the distinction between "route" and "highway" is not at all relevant. Where a private transport owner makes an application to operate on a route which overlaps even a portion of the notified route, then that application has to be considered only in the light of the scheme as notified. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected. There is no justification for holding that the integrity of the notified scheme is not affected if the overlapping is under five miles or because a condition has been stipulated in the permit that the operation will not pick up or set down any passangers on the overlapped route."

In *Adarsh Travels Bus Service* v. *State of U.P. & Ors.,* [1985] Suppl. 3 SCR 661, this court held thus :

> "Where a route is nationalised under Chap. IV-A of the Act, a private operator with a permit to ply a stage carriage permit over another route but which has a common overlapping sector

A with the nationalised route cannot ply his vehicle over that part of the overlapping common Sector, even if with corridor restrictions, that is, he does not pick up or drop passengers on the overlapping part of the route.

B While the provisions of Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are clear and complete regarding the manner and effect to the "take over" of the operation of a road transport service by the State Transport Undertaking in relation to any area or route or portion thereof. While on the C one hand, the paramount consideration is the public interest, the interest of the existing operators are sufficiently well-taken care of and slight inconvenient inevitable are sought to be reduced to a minimum.

D A perusal of s. 68-C, s. 68-D(3) and S.68-FF in the light of the definition of the expression 'route' in S.2(28A) appears to make it manifestly clear that once a scheme is published under S. 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking E may operate on the notified or national route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may F not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. The private operator cannot take the plea of inconvenience of the public. If indeed there is any need for protecting the travelling public from inconvenience the State Transport Undertaking and the Government G will make a sufficient provision in the scheme itself to avoid inconvenience being caused to the travelling public."

The contention of Shri Harish Salve, the learned Senior counsel for contesting respondents, is that the scheme of nationalisation relates to "any H area, route or portion thereof". In *Shri Chand's* case this court quashed the

draft scheme dated February 26, 1959 taking over the Saharanpur-Shahdara-Delhi route. The fresh draft scheme dated February 13, 1986 to nationalise Saharanpur-Shahdara-Delhi route stood lapsed by operation of s. 100(4) read with s.217(2)(e) of the Act. Therefore, the grant of permits to the respondents is valid in law. In Shri Chand's case this court quashed the draft scheme dated February 26, 1959 as it was an abuse of the process of law to keep draft scheme pending for well over 26 years creating monopoly in favour of the 50 existing operators who compete with the state. The review petition filed by the U.P. Govt. in *Shri Chand's* case was rejected by this court. The result is that there is no scheme on Saharanpur to Delhi route. The High Court thereby was justified in dismissing the write petitions.

In *H.C. Narayanappa & Ors.* v. *State of Mysore & Ors.*, [1960] 3 SCR 742 the Constitution Bench held that the scheme framed under s. 68-C of the repealed Act is law within the meaning of Arts.13 and 19(6) of the Constitution. It excludes the private operators from notified routes or areas. It immunes from the attack that it impinges the fundamental rights guaranteed under Art. 19(1)(g). It also could not be challenged as discriminatory. In *Nehru Motor Transport Co-op. Society & Ors.* v. *State of Rajasthan & Ors.*, [1964] 1 SCR 220, another Constituion Bench held that the Act 4 of 1939 (repealed Act) does not provide for review of an approval once given though it may be entitled to correct any clerical mistakes or inadvartent slips that may have crept in the order. It was also held that once a scheme was finally approved and published in the gazette, it is final and the approval of the scheme was as a whole. In *Jeevan Nath Bahl's* case a Bench of three Judges of this court held that the effect of the order passed by the high Court in the first instanace was that the scheme in existence must have statutory operation contemplated by s.68-F of the Motor Vehicles Act and that the order of the High Court intended to prohibit the enforcement of the scheme against two groups of the petitioners in the High Court, namely, then existing 50 operators who challenged the scheme. It is seen that Bulandshahr to Delhi route was nationalised by publication of the approved scheme in the gazette on October 6, 1956 and the approval of Saharanpur - Shahdara - Delhi route on September 29, 1959 became final. Therefore, the routes or areas therein stood nationalised to the complete exclusion of private operators except to the extent under the scheme therein i.e. the 50 operators against whome it was held not to be operative till their objections are heard and decided by

A the hearing authority.

In *Mysore State Road Transport Corporation's* case, this court per majority held that where a part of the Highway to be used by private Transport owners traverse on a line on the same highway on the notified B route, then that application has to be considered only in the light of scheme as notiofied. If any conditions are placed then those conditions have to be fulfilled and if there is a total prohibition then the application must be rejected. If there is a prohibition to operate on any notified route or routes, no licence can be granted to any private operators, whose route traversed or overlapped in part or whole of that notified route. The inter-section of C the notified routes must amount to traverse or overlapping the routes because the prohibition must apply to the whole or part of the route on the highway on the same line or the route and inter-section cannot be said to be traversing the same line. In *S. Abdul Khader Saheb* v. *Mysore Revenue Appellate Tribunal & Ors.*, [1973] 1 SCC 357, this court approved the view D of the Karnataka High Court that, when once on a route or a protion of the route there has been total exclusion of the operation of the stage carraige services by operators other than the State Transport Undertaking, by virtue of a clause in an approved scheme the authorities granting permit under Chapter IV of the Motor Vehicles Act should refrain from granting the permit contrary to the scheme. In *Adarash Travels's* case this court by E a Constitution Bench held that there is a total prohibition of private operators from plying the state carriages on the whole or part of the notified routes, even though there is partial overlapping on the said route or routes. The operation of the Road Transport Service by the State Road Transport Undertaking in relation to that area or route or portion thereof F is total and complete prohibition of the operation of the Road Transport Service by private operators. The operation of the Road Transport Service by the State Undertaking in relation to that area or route or a portion thereof overrides the provisions of Chapter IV of the Repealed Act 4, 1939. This court also rejected the contention of the operators that on the nationalised approved routes or overlapped route the private operator is G entitled to ply the stage carriages without picking up or setting down any passengers on the common sector. This court also negatived as lacking substance of the contention that complete exclusion of private operators from common sector would be violative of Art. 14 and that it would be *ultra vires* of s. 68-D. This court approved the majority view in *M/s State* H *Road Transport Corporation's* case and *Abdul Khader Shaheb's* case.

It is unfortunate that *Jeevan Nath Bahl's* case was not brought to the notice of the two Judges Bench when *Shri Chand's* case was decided. Despite its being pointed out in the Review Petition, the same was dismissed. The question is what is the effect of the decision in *Sri Chand's* case over *Jeevan Nath Bahl's* case. Consistent law laid down by this court is that draft scheme under s. 68-C and approved under s.68-D of Chapter IVA of the Repealed Act (Chapter VI of the Act), is a law and it has overriding effect over Chapter IV of the repealed Act (Chapter V of the Act). It operates against everyone unless it is modified. It excludes private operators from the area or route or a portion thereof covered under the scheme except to the extent excluded under that scheme itself. The right of private operators to apply for and to obtain permits under Chapter IV of the repealed Act (Chapter V of the Act) has been frozen and prohibited. The result that emerges therefrom it that the nationalisation of Saharanpur - Shahdara - Delhi route approved and published on September 29, 1959 became final and to that extent it cannot be said to have been quashed by this court in *Sri Chand's* case. The approved scheme is law operating against everyone except 50 objectors/operators and the writ issued by this court cannot have the effect of annuling the law. What was quashed and issue of fresh draft scheme pursuant thereto, relate to only of original draft scheme operative against 50 objectors/operators and no more. Even on principle, the decision of a Bench of two Judges cannot have the effect of overruling the decision of a Bench of three Judges. The fresh draft scheme under s.68-C dated February 13, 1986 must, therefore, be construed to be only in relation to 50 existing operators as per the directions ultimately emerged in *Jeevan Nath Bahl's* case.

The next question is whether the draft scheme dated Feb. 13, 1986 stood lapsed under S. 100(4) of the Act. The High Court relied on its earlier judgment and held that by operation of sub-sec. 4 of s.100 of the Act the draft scheme stood lapsed from one year of the date of its publication. In *Krishan Kumar* v. *State of Rajasthan & Ors.*, [1991] 4 SCC 258 this court considered the effect of s.100(4) read with s.217(2)(e) of the Act and held that the rigour of one year period provided under s.100(4) would apply to the draft scheme published under s.100(1) of the Act and it would not apply to the scheme framed under s.68-C and pending as on the date of the commencement of the Act. On harmonious construction of ss.217(2)(e) and 100(4) of the Act, the draft scheme published under s.68-C of the Repealed Act would stand lapsed only if it is not approved within

A one year from the date when the Act came into force i.e. with effect from July 1, 1989 by which date it was pending before the hearing authority and one year had not expired. The hearing authority, therefore, wrongly concluded that the draft scheme stood lapsed. The High Court also equally committed illegality following its earlier view which now stood overruled by this court in *Krishan Kumar's* case. Accordingly it must be held that the B view of the High Court and the hearing authority is clearly illegal.

The result of the above discussion will lead to the following conclusions :

C The nationalisation of Saharanpur - Shahdara - Delhi route by publication of the approved scheme on September 29, 1959 is operating to the total exclusion of every private operator except U.P. State Road Transport Corporation and 50 operators including the appellants herein whose objections were upheld by the High Court in the first instance and merged D in the judgment of this court in *Jeevan Nath Bahl's* case. Equally of Bulandshar to Delhi route. Under s. 80 of the Act no private operator has right to apply for and obtain permits to ply the stage carriages on the approved or notified route/routes or areas or portion thereof. The grant of permit to all the respondents 7 to 285 private operators in C.A. 1198/92 (S.L.P. No.9701/90) or any others under s.80 of the Act on the respective E routes or part, or portion thereof to provide transport service is clearly *illegal and without jurisdiction.*

It is true as contended by Shri Salve that in *Mithilesh Garg & Ors.* v. *Union of India & Ors.*, [1992] 1 SCC 168, this court held that the liberal F policy of grant of permits under s.80 of the Act is directed to eliminate corruption and favouritism in the process of granting permits, eliminate monopoly of few persons and making operation on a particular route economically viable and encourage healthy competition to bring about efficiency in the trade. But the free ply is confined to grant of permits under Chapter V of the Act. By operation of s.98 of the Act, Chapter VI overrides G Chapter V and other law and shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or any other law for the time being in force or any instrument having effect by virtue of such law. The result is that even under the Act the existing scheme under the repealed Act or made under Chapter VI of the Act shall have over-riding effect on H Chapter V notwithstanding any right given to private operators in Chapter

V of the Act. No corridor protection to private operators is permissible. A

Accordingly we hold that the approved scheme dated September 29, 1959 on Saharanpur - Shahdara - Delhi route shall continue to be valid scheme under the Act. The U.P. State Road Transport Corporation alone shall have the exclusive right to ply their stage carriages on the said route B and Bulandshahr - Delhi route/areas or portions thereof. By operation of the orders passed by the Allahabad High Court which merged in *Jeevan Nath Bahl's* case, protection was given only to 50 private operators including the appellants herein to be heard of their objections. The fresh draft scheme dated February 13, 1986 had not been lapsed and would continue to be in operation. It would be confined only to 50 operators. C

The 50 operators including the appellants/private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in *Jeevan Nath Bahl's* case and D the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after Sept. 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in *Grindlays Bank Ltd.* v. *Income-tax Officer & Ors.*, [1990] 2 SCC 191, held that the High Court while E exercising its power under Art. 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the F power under Art. 142(1) of the Constitution this court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them G to the draft scheme dated Feb. 26, 1959. Moreover, since this court in *Jeevan Nath Bahl's* case upheld the approved scheme and held to be operative, the hearing of their objections would be a procedural formality with no tangible result. Therefore, the objections outlived their purpose. They are, therefore, not entitled to any hearing before the hearing authority. H

A The appeals are accordingly allowed. The grant of permits to all the respondents/private operators and respondents Nos.7 to 285 in C.A. No. 1198/92 (S.L.P. No. 9701/90) under s.80 of the Act or any others on the respective routes, parts or portions of the nationalised routes on Feb. 13, 1986 draft scheme are quashed. The hearing authority shall lodge the B objections of the 50 operators including the appellants herein. The competent authority shall approve the draft scheme of 1986 within a period of 30 days from the date of receipt of the judgment; and publish the approved scheme in the gazette. The permits granted to the 50 operators or any other shall stand cancelled from that date, if not having expired in the meanwhile. No permits shall be renewed. Appropriate action should be taken by C respondents 3 to 4 in CA No. 1198/92 (S.L.P. No. 9701/90) to see that all the permits granted to the 50 operators including the appellants are seized and cancelled. The U.P. State Transport Corporation shall obtain required additional permits, if need be, and put the stage carriages on the routes to provide transport service to the travelling public immediately on publica- D tion of the approved draft scheme in the State Gazette. The Appeal arising out of S.L.P. No. 2083/91 is allowed with costs throughout against respondents Nos.4 to 13. The appeals arising out of S.L.P. Nos.6300/91, 9701/90 and 9702/90 are allowed without costs.

N.V.K. Appeals allowed.