

(1987) 09 MP CK 0004
In the Madhya Pradesh High Court
Case No : M P. No. 2845 of 1983

Ali Ahmad and Sons

APPELLANT

Vs

State of M. P. and Others

RESPONDENT

Date of Decision : 14-09-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 68C, 68D(1)

Citation : (1988) JLJ 180

Hon'ble Judges : N.D. Ojha, C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : S.Q. Hasan, for the Appellant; S.K. Dixit, Dy. Advocate General for respondent Nos. 1 and 2 and V.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.—This Order shall also govern the disposal of M. P. Nos. 7857/83, 45/84, 428/84 and 1463/84.

2. Various schemes contemplated by section 68-C of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) were published, in the official gazette inviting objections as contemplated by section 68-D (1) of the Act to those schemes. The petitioners of these writ petitions filed objections to the schemes concerned within the period granted for filing objections. Even before these objections could be decided, these writ petitions were filed challenging the validity of the schemes.

3. It has been urged by learned counsel for the petitioners that these schemes are invalid inasmuch as even though they were published in one news-paper in the regional language as contemplated by Section 68-D (1) of the Act, their contents were in English. A similar objection was raised in Madhya Pradesh State Road Transport Corporation, Bhopal v. State Govt. of M. P., Bhopal and others 1984 JLJ 270 : 1984 MPLJ 148 where it was held by a learned Single Judge of this Court that it is not necessary that the scheme itself should be published in

the regional language and the requirement of section 68-D (1) was satisfied if publication was made in a newspaper in the regional language circulated in the area proposed to be covered by the scheme. In taking this view, the learned Single Judge has placed reliance on certain earlier decisions of this Court, two of which are Division Bench decisions in M. P. No. 701/79 and 702/79, both dated 11.10-1979. The schemes challenged in these two writ petitions also, like the present schemes, were published in a newspaper in the regional language, although the contents of the schemes were in English. Objections were, however, filed by the petitioners of those writ petitions also within the period prescribed. Their plea that the schemes were invalid was repelled. It was held as under :

Even accepting that the scheme ought to have been published in Hindi, the non-publication in Hindi, in our opinion, is not fatal to the scheme. In this case, the petitioners were not at all prejudiced by the non-publication in Hindi. The petitioners came to know of the scheme fully and filed their detailed objections before the Special Secretary within the period allowed under the law. As the petitioners were not prejudiced, non-compliance with Section 68-D, if any, in that the draft scheme was not published in regional language, imports no invalidity to the scheme.

The facts being similar, the observations made above apply with equal force to the facts of the instant writ petitions also. Consequently, the impugned schemes cannot be held to be invalid on this ground.

4. In this connection, another submission has been made by learned counsel for the petitioners that since the contents of the schemes were in English and not in the regional language, there was no valid publication of the scheme and as such the time for filing objection to these schemes did not start running. We do not find any substance even in this submission. Firstly, the publication of the scheme has been held to be valid. Secondly, the starting point of 30 days' limitation for filing objection u/s 68-D (1) is the date of the publication of the scheme in the official gazette and not in the news-paper in a regional language.

5. It was then urged by learned counsel for the petitioners that Shri A. K. Chandra, the Secretary who has been dealing with the objections filed u/s 68-D of the Act, has no jurisdiction to do so. We find it difficult to agree with this submission also.

6. It has not been disputed by learned counsel for the petitioners that Shri A. K. Chandra has been authorised by the State Government under sub-rule (2) of Rule 136 of the Rules to entertain the objections contemplated by section 68-D of the act.

7. It has also not been disputed by learned counsel for the petitioners that a notification contemplated by sub-section (2-A), as inserted in Madhya Pradesh in section 68-D of the Act, has been issued authorising Shri A. K. Chandra to hear objections under sub-section (2) of section 68-D of the Act. The objection which has been raised by learned counsel for the petitioners is that he has not been

conferred with the power to approve or modify the scheme by passing final order. In regard to this plea, in the returns filed on behalf of the respondents, reliance has been placed on various notifications issued by the State Government from time to time authorising Shri A. K. Chandra to take action into the matter of nationalisation of routes. These notifications were issued under the Rules of Business. Part V of the Rules of Business, a Government Publication whereof has been produced before us by Shri S. K. Dixit, learned Dy. A. G. appearing for the respondents, deals with supplementary instructions under Rule 13, of the Business Rules. Rule 2-A of these Rules reads as hereunder : -

2A. Notwithstanding anything contained in instruction No. 2 but subject to the Rules of Business, any particular item of business allocated to a department may be disposed of-

(i) by the Secretary of the department concerned if the Chief Minister or the Minister-in-charge so directs;

OR

(ii) by the Chief Secretary or Additional Chief Secretary or Special Secretary or any other Secretary, if the Chief Minister so directs;

and the disposal by such Secretary shall be deemed to be disposal by Government.

Explanation-For the purpose of this instruction, the power to dispose of a case includes the power to-

(i) hear the parties;

(ii) make such inquiry and take such other action as may be necessary for or incidental to reaching a final decision in the case;

(iii) pass final orders and take such further action as may be necessary in exercise of the power conferred on the State Government by or under any provision of law;

(iv) approve or modify a scheme and take all further steps towards that end including publication with or without the approval of the Central Government as the case may be, u/s 68-D of the Motor Vehicles Act, 1939.

8. Annexure R-1 to the return in M. P. No. 2845/83 deals with the assignment of work relating to nationalisation of transport scheme. A proposal was made to the Chief Minister on 8-6-83 that work relating to transport nationalisation scheme, if approved, could be assigned to one of the two Secretaries, namely, Shri A. K. Chandra and Shrimati Aasha Das. There is an order of the Chief Minister dated 10-6-83 which reads :

Shri A. K. Chandra can be given this work.

Annexure R-2 to the said return appears to be a notification dated 14-6-83

issued by the Up Sachiv, Madhya Pradesh Shasan, Samanya Prashasan Vibhag, giving effect to the aforesaid order of the Chief Minister. Annexure R-1 to the return in M. P. No. 2857/83, on the other hand, is a notification dated 6-8-83 issued by the State Transport Minister, specifically authorising Shri A. K. Chandra to approve or modify schemes as contemplated by section 68-D of the Act. On the basis of these notifications, it has been urged by learned counsel for the respondents that Shri A. K. Chandra stands conferred with all the necessary powers contemplated by section 68-D of the Act as also under Rule 136 of the Rules framed thereunder.

9. In this connection, however, reliance was placed by learned counsel for the petitioners on the decision of a Division Bench of this Court in *Premchand Jain Vs. State of M.P. and Others*, In our opinion, on the crucial point, the facts of that case are clearly distinguishable. Firstly it was held in that case that power to hear objections to schemes, as contemplated by sub-section (2-a) of section 68-D of the Act does not include power to approve or modify the scheme. It was further held in the said case that necessary power in this behalf could be conferred by the State Government on an officer under its Rule of Business. The notifications in case of *Premchand Jain supra*, however, were held to be not sufficient on the ground that so far as those notifications were concerned, they did not confer the necessary power on the officer concerned. In this connection, the observations made in para 16 of the report may be referred to.

10. On behalf of the respondents in the aforesaid case it was argued on the basis of the returns filed that the Special Secretary concerned had been "authorised to act for the State Government". This plea was repelled by stating "It is not suggested that there was any order other than the two orders dated 4-4-1963 and 12-7-63 by which he was clothed with such authority. As shown, these two orders did not authorise R. S. Shukla to approve or modify the scheme That being so, if he actually approved or modified the scheme, he did so without authority".

11. In the instant case, apart from the general power conferred on Shri A. K. Chandra with regard to the work relating to transport nationalisation schemes, there was specific notification by the State Transport Minister, a copy whereof has been filed as Annexure R-1 to the return in M. P. No. 2857/83 already referred to above which conferred on Shri A K. Chandra the power to approve or modify the schemes as contemplated by section 68-D of the Act. That such a power can be conferred under the Rules of Business now, admits of no doubt not only in view of the decision of this Court in case of *Premchand Jain (supra)*, but also in view of a subsequent decision of the Supreme Court in *Capital Multi-purpose Co-operative Society Bhopal and Others Vs. The State of M.P. and Others*, . In this view of the matter, the challenge to the power of Shri A. K. Chandra to hear and pass final orders with regard to various schemes including the power to approve or modify them also fails.

12. No other argument has been pressed.

13. In the result, we find no merit in these writ petitions. They are accordingly dismissed. No order as to costs. Outstanding security amount, if any, be refunded to the petitioners of each of these writ petitions.