
(1967) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 367 of 1965, Civil Writ Petns. No"s. 414 to 427 of 1965 and 436, 437 and 539 of 1965

Green Bus (Rajasthan) Private Ltd. and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-04-1967

Acts Referred:

Motor Vehicles Act, 1939 — Section 68C, 68D, 68I
Rajasthan State Road Transport Services (Development) Rules, 1960 — Rule 2, 3, 7(1), 8
Road Transport Corporations Act, 1950 — Section 3

Citation : AIR 1968 Raj 169

Hon'ble Judges : D.S. Dave, C.J.;V.P. Tyagi, J

Bench : Division Bench

Advocate : J.P. Jain, Udham Ramraj, P.C. Bhandari, A.L. Mehta, D.P. Gupta and H.S. Rastogi, for the Appellant; Rajanarain, Dy. Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Tyagi, J.—Since common questions of law and facts are involved in these 18 Writ Petitions, we propose to dispose them of by a single judgment

2. The petitioner in D. B. Civil Writ Petition No. 539 of 1965 (Shri Gopal Singh v. The State of Rajasthan and Others) has challenged the scheme pertaining to Jaipur-Bharatpur route which is sought to be modified u/s 68-E of the Motor Vehicles Act (hereinafter to be referred to as the "Act") while the legality of the scheme for nationalising Udaipur-Kherwara Ratanpur route inclusive of Udaipur-Rikhabdeo, Udaipur-Dungarpur, Udaipur-Ratanpur and Dungarpur-Ratanpur routes or portions thereof has been challenged by the other 17 writ petitions.

3. These 17 writ petitions have been filed by the existing operators who were holding non-temporary permits in the year 1962 for stage carriages on the aforesaid routes or portions thereof which were sought to be nationalised by the

impugned scheme. This scheme was published by the Rajasthan Roadways for nationalising Udaipur-Ahmedabad route in the Udaipur Region inclusive of (i) Udaipur-Rikhabdeo; (ii) Udaipur-Dungarpur; (iii) Udaipur-Ratanpur, and (iv) Dungarpur-Ratanpur routes or portions thereof. Objections were filed by existing operators with the Secretary to the Govt. of Rajasthan in the Transport Department to challenge the scheme. The Legal Remembrancer to the Govt. of Rajasthan, who was appointed to dispose of the objections u/s 68-D of the Act, gave hearing to the objectors and after formulating the procedure for disposal of the objections he recorded the evidence adduced by the objectors and also inspected the route from Udaipur to Ahmedabad. Thereafter, on 22-9-1964 the State Government issued a notification u/s 3 of the Road Transport Corporation Act, 1950, constituting the Rajasthan State Road Transport Corporation with effect from 1-10-1964 for the purpose of creating the State Transport Undertaking to provide the transport services on the route or routes proposed to be nationalised under Chapter IV-A of the Act.

The Rajasthan Roadways which was defined in the Rajasthan State Road Transport Services (Development) Rules, 1960 (hereinafter to be referred to as the "Rules of 1960"), as the State Transport Undertaking became defunct from 1-10-1964. The State Government by issuing another notification dated 18-11-64 purported to have been issued u/s 34 of the Road Transport Corporation Act, 1950, issued administrative instructions whereby it was directed that the Corporation would take over the management of the existing Roadways Department of the Government of Rajasthan. Instruction No. 9 provided that any scheme prepared or any permit granted to and generally anything done or any action taken by or in favour of the State Government in respect of the State Undertaking shall be deemed to have been prepared or granted to or done or taken by or in favour of the Corporation.

After the Corporation was constituted, an objection was taken before the Legal Remembrancer by the objectors that the draft scheme proposed by the Rajasthan Roadways could no longer be considered by the Legal Remembrancer as under the Rules the Corporation established by the State Government could not pursue the proposed scheme and therefore the scheme proposed by the Rajasthan Roadways should be rejected. A copy of this application dated 23-10-1964 submitted by the objectors in writ petition No 367 of 1965 (Messrs Green Bus (Rajasthan) Private Ltd. Bapu Bazar, Udaipur v. State of Rajasthan), may be referred here. This application is Ex. 22 on the record of that file. The counsel for the Rajasthan State Roadways who at that juncture desired to represent the Rajasthan State Road Transport Corporation requested the Legal Remembrancer for a short adjournment and the learned Legal Remembrancer in order to meet the objections filed by the objectors adjourned the hearing of the objections on a verbal request made by the Rajasthan State Road Corporation. That Legal Remembrancer then ordered for impleading the Corporation as a party to the proceedings pending before him u/s 68-D of the Act. The objectors then raised a plea that the Rajasthan State Road Transport Corporation was not a

State Transport Undertaking as defined in the Rules of 1960 and, therefore, it could not propose prepare continue or implement any scheme for nationalisation of the Road Transport in Rajasthan. It also contended that the Corporation was not a successor of the Rajasthan State Roadways and therefore it could not continue to pursue a scheme which was prepared and proposed by the Rajasthan State Roadways

These objections were of a preliminary nature but before they could be disposed of by the Legal Remembrancer, the Rajasthan Government issued another notification purporting to be under Rule 7(1) of the Rules of 1960 appointing the Joint Legal Remembrancer who is respondent No. 5 in these writ petitions to consider the objections for the purposes of approving or modifying the impugned scheme. The matter came up for hearing before the Joint Legal Remembrancer for the first time on 1-5-1965. The objector challenged the legality of the appointment of the Joint Legal Remembrancer and submitted that he had no jurisdiction to take proceedings u/s 68-D of the Act. The learned Joint Legal Remembrancer repelled the objections questioning his appointment and jurisdiction to dispose of the objection of the petitioners and to approve the scheme. He also rejected the aforesaid preliminary objection and heard the arguments of the parties and disposed of the objections and approved the scheme of Udaipur-Kherwara-Ratanpur route on 11-6-1965, which was ordered to come into force from 15-8-1965.

The petitioners in all these 17 writ petitions have questioned the legality of the scheme approved by the Joint Legal Remembrancer by his order dated 11-6-1965 and have prayed that by issuing a writ of certiorari, or any other writ, order or direction the order of the Joint Legal Remembrancer dated 11-6-1965 be set aside and the scheme approved thereby may be quashed. They have also prayed for a consequential relief that the opposite parties may be restrained from implementing the scheme by cancelling the permits of the petitioners.

4. A joint reply was filed to these writ petitions by the State of Rajasthan, Legal Remembrancer, Joint Legal Remembrancer, Secretary to the Government of Rajasthan in the Transport Department and Shri Shive Shankar, Home Secretary denying the claim of the petitioners for the relief sought by them in their writ petitions on the ground that in pursuance of the scheme approved by the Joint Legal Remembrancer the permits of the petitioners were cancelled and therefore no legal right was left in them to challenge the legality or otherwise of the scheme. The facts mentioned in these writ petitions leading to the filing of the objections and their disposal by the Joint Legal Remembrancer were, however, not denied by the respondents. A reply was also filed by the Assistant General Manager of the Rajasthan State Road Transport Corporation, Jaipur, denying the allegations of the petitioners that the answering respondent was not competent to pursue the draft scheme after the Rajasthan Roadways, became defunct. It was also contended that the Rajasthan Road Transport Corporation which was constituted under the Road Transport Corporation Act, 1950, became the

successor of the Rajasthan State Roadways and as such it could pursue the draft scheme before the Legal Remembrancer or Joint Legal Remembrancer)" under the provisions of the Act and the Rules of 1960, as, the Corporation admittedly falls under the definition of the State Transport Undertaking under the Act. It was also submitted that the State Govt. under the powers exercised by it u/s 34 of the State Transport Corporation Act issued administrative directions whereby all business of the State Transport Undertaking which was earlier done by the Transport Department was transferred to the Corporation and hence the Corporation became the successor of the previous State Transport Undertaking which proposed the scheme and in these circumstances the answering respondent was within its right to pursue and implement the scheme. It was, therefore, prayed that the writ petitions of the petitioners be dismissed with costs.

5. During the pendency these writ petitions the permits of the petitioners in 13 writ petitions except the petitioners in writ petition No. 416 of 1965 (Laxmi Motor Works v. State of Rajasthan and Others). No. 436 of 1965 (Kanhialal v. State of Rajasthan and Others). No. 425 of 1965 (Bombay Transport Co., v. State and others) and No. 419 of 1965 (Udailal v. State and others) got exhausted and therefore an application was moved by the learned counsel for the respondents that the petitioners in those 13 writ petitions have already availed full advantage of their permits which have expired during the pendency of these writ petitions and therefore no right is left in them to challenge the validity of the scheme for the reason that their rights to ply the vehicle on the nationalised route on the basis of the permits which have since been exhausted have come to an end and that they have not been granted any further permit on those routes. It is admitted by the learned counsel on behalf of these thirteen petitioners that during the pendency of these writ petitions the permits of the petitioners in the 13 writ petitions except No. 416 of 1965 (Laxmi Motor Works v. State and others), No. 436 of 1965 (Kanhialal v. State and others) No 425 of 1965 (Bombay Transport Co. v. State and others) and No. 419 of 1965 (Udaipal v. State and others) have expired but the learned counsel contends that the petitioners cannot be deprived of their right of getting their permits renewed by the Regional Transport Authority if the scheme impugned is quashed by this Court, as according to them, their applications for renewal of permits are still pending and they have not been disposed of by the Regional Transport Authority. It is, however, conceded that if the impugned scheme holds the field no right would be left to them as their permits have been exhausted after the writ petitions were admitted by this Court.

6. Mr. Jain appearing on behalf of the petitioners in all the 18 writ petitions has addressed the Court at length throwing a challenge to the legality of the scheme inter alia on the ground that the Joint Legal Remembrancer had no jurisdiction to hear the objections and approve the scheme as his appointment which was made under Rule 7(1) of the Rules of 1960 was ultra vires of the powers of the Governor, as the Governor could not have appointed the Joint Legal

Remembrancer under the Business Rules framed by him under Article 166(3) of the Constitution. According to the learned counsel the scheme could be approved by the Minister-in-Charge of the Transport Department under Rule 21 of the Business Rules. His next contention is that the scheme proposed by the Rajasthan State Roadways which ceased to exist after 1-10-1964 could not be considered by the Joint Legal Remembrancer even if he had jurisdiction to do so, as the State Road Transport Corporation had no authority, under the Rules to pursue the scheme because it did not fall within the definition of the State Transport Undertaking as defined in Rule 2(e) of the said Rules. Learned Counsel also challenged the validity of the scheme on various other grounds but since, in our opinion, the second ground is the most crucial one we need not refer to others here.

7. We may first of all take up objection No. 1 of Mr. Jain. It may be recalled here that the draft scheme was published in the year 1962 and thereafter the Legal Remembrancer was appointed to dispose of the objections filed u/s 68-D of the Act. The procedure was formulated to dispose of the objections by the Legal Remembrancer in consultation with the objectors to dispose of the objections and to approve the scheme and in pursuance thereof certain proceedings were taken by the Legal Remembrancer. The Legal Remembrancer examined the witnesses produced by the parties and at the request of the objectors inspected the route also. When these proceedings were going on, the State Government by a notification issued under the Road Transport Corporation Act, 1950, constituted the Rajasthan State Road Transport Corporation and by issuing administrative instructions u/s 34 of that Act directed that the Rajasthan State Road Transport Corporation shall be the successor of the Rajasthan State Roadways. The Legal Remembrancer also impleaded the Corporation as one of the parties to these proceedings. The objectors filed their objections that the scheme proposed by the Rajasthan State Roadways cannot be pursued by the Corporation and therefore the proceedings should be dropped. It was at this stage that the State Government issued another notification appointing the Joint Legal Remembrancer as an Authority to consider the objections for the approval and modification of the scheme u/s 68-D of the Act. Since lengthy arguments have been advanced challenging this notification appointing the Joint Legal Remembrancer under Rule 7(1) of the Rules of 1960, it will be convenient to represent this notification in extenso at this stage.

"RAJASTHAN GAZETTE"

Extraordinary

Published by Authority.

Chaitra 26, Friday Shuk Samvat 1887,

April, 1965.

Bhag 4 (Ga).

JUDICIAL DEPARTMENT.

ORDER

Jaipur, April 16 1965.

No. F. 1 (8) Jud-55-In pursuance of Section/Rule 7(1) of the Rajasthan State Road Transport Services (Development) Rules, 1960, the Governor is pleased to order that the Joint Legal Remembrancer to the Government of Rajasthan shall consider objections to, approval and modifications of the scheme u/s 68-D of the Motor Vehicles Act, 1939 (Central Act TV of 1939).

This is in supersession to this Department order No. F. 12 (1) LJ/B/60. dated the 13th October 1960

By order,

Sohan Lal Agrawal

Secretary to Govt."

8. The first attack of Mr. Jain about this notification is that under Rule 7 (1) of the Rules of 1960 the Governor could appoint an officer to dispose of the objections received u/s 68-D of the Act only under the Rules made by the Governor in pursuance of Clause (3) of Article 166 of the Constitution of India. In this connection Mr. Jain, further contended that the Rules of Business were amended by the Governor on 11-10-1960. where by a new Rule 33-A was introduced in the following form:

"33-A Powers of the State Government regarding hearing of objections u/s 68-D (2) of the Motor Vehicles Act, 1939, shall be exercised by the Secretary to the Government. Law and Judicial Department or the Legal Remembrancer to the Government

His argument is that after this new rule was introduced only the Secretary to the Government. Law and Judicial Department or the Legal Remembrancer to the Government could be appointed for the purpose of hearing of objections u/s 68-D (2) of the Act The appointment of the Joint Legal Remembrancer, therefore, militates against the provisions of the new Rule 33-A and is therefore ultra vires of the powers of the Governor as long as this new rule holds the field Mr. Rajanarain appearing on behalf of the State strongly refuted this submission of Mr. Jain and contended that although the Business Rules were amended by the Governor, no such rule like Rules 33-A was ever introduced in those Rules. His contention is that by amendment dated 11-10-1960 the Business Rules were amended only to the extent that in part XVII of the First Schedule, item No. 12 was added after item No 11, which is as follows:

"12. Consideration of objections to approval and modification of the scheme u/s 68-D of the Motor Vehicles Act, 1939"

By introducing this new item the Business Rules provided that the objections

which were formerly considered and disposed of by the Secretary in the Home Department shall henceforward be dealt with in the Legal Remembrancer's office and Legal affairs Department. On the basis of the introduction of new item No. 12, Mr. Rajnarain submits that the Legal Remembrancer under the Business Rules was the proper authority for disposing of the objections received u/s 68-D(2) of the Act. He further contended that since the Legal Remembrancer himself became the Chairman of the State Transport Authority it was thought advisable that it different authority in the Legal Remembrancer's Office and Legal Affairs Deptt. may be entrusted to dispose of the objections u/s 68-D(2) and approve the scheme u/s 68-D and therefore, on the recommendation of the Minister concerned which was submitted to the Governor through the Chief Minister, the Governor appointed the Joint Legal Remembrancer as an authority under Rule 7(1) of the Rules of 1960 to dispose of the objections u/s 68-D (2) of the Act. He also contended that under Rule 54 of the Business Rules the Governor has ample authority to issue on the advice of the Chief Minister, supplementary instructions for the disposal of the Government work and this order of appointing the Joint Legal Remembrancer should therefore be construed to have been issued by the Governor in pursuance of Rule 54 of the Business Rules.

9. Mr. Jain submitted before as a printed copy of the Business Rules framed by the Governor under Article 166(3) of the Constitution but that copy does not contain Rule 33-A which was said to have been introduced by alleged amendment of 11-10-1960, The petitioners could not support their contention by filing any affidavit that Rule 33-A was ever introduced in the Business Rules. In view of the fact that the learned Dy. Government Advocate has strongly refuted this allegation of the petitioners that Rule 33-A was introduced whereunder Legal Remembrance or the Law Secretary only could be appointed as an authority u/s 68-D(1) of the Act, it is difficult for us to accept the contention of the petitioners that no other person except the Law Secretary or the Legal Remembrancer could be appointed for the purposes of taking proceedings u/s 68-D of the Act.

10. Rule 7(1) of the Rules of 1960 requires that the objections received u/s 68-D(2) shall be considered by such officer as is authorised to do so by or under the Rules made by the Governor in pursuance of Clause (3) of Article 166 of the Constitution. The appointment of the Joint Legal Remembrancer has been made by means of the notification referred to above which refers Rule 7(1) of the said Rules, but it does not mention a particular rule in the Business Rules under which this appointment, was made by the Governor. It therefore raises a question whether the appointment of the Joint Legal Remembrancer was in pursuance of the Business Rules or not

11. Under Article 154(1) of the Constitution the executive power of the State vests in the Governor and is to be exercised by him either directly or through an officer subordinate to him in accordance with the Constitution. The provision contained in Article 166(3) empowers the Governor to frame the rules for the more convenient transaction of the business of the Government. It is under this

power that the Business Rules have been framed by the Governor in the State of Rajasthan. Rule 4 of these Rules requires that the business of Government shall be transacted in the Secretariat Deptt. specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. Part XVII deals with the Legal Remembrancer's Office and Legal Affairs Department and Item No. 12 in this part refers to the business which relates to the disposal of the objections or approval and modification of the scheme u/s 68-D of the Motor Vehicles Act. In this scheme of things the objections filed by the objections to the proposed scheme were to be dealt with in the Legal Remembrancer's Office and Legal Affairs Department, the portfolio of which was held by the Law Minister,

Rule 21 of the Rules which falls in Chapter IX (General) deals with the mode of disposal of the cases in the Department and it requires that except as otherwise provided by any other rule and cases shall ordinarily be disposed of by or under the Authority of Minister-in-Charge who may by means of standing order give such directions as he thinks fit for the disposal of the cases in the Department. It also requires that the copies of such standing orders shall be sent to the Governor and the Chief Minister. Mr. Jain contends that no directions were issued or standing orders were passed by the Minister in charge under Rule 21 to dispose of the matters arising out of Section 68-D(2) of the Act and therefore, the final orders could be passed on these cases only by the Minister and by no other authority. He further contended that if Rule 33-A is not there in these rules then it is only the Minister who could dispose of the objections filed by the objectors u/s 68-D (2) and the scheme could be approved by him alone. In support of his contention he placed reliance on Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, In that case the Business Rules of the Andhra Pradesh State came up for consideration of the Supreme Court in order to find out as to who was the proper authority to dispose of the objections filed by the existing operators u/s 68-D(2) of the Act to challenge the scheme and while considering all the relevant provisions of the Act and Rules made under Clause (3) of the Article 166 of the Constitution their Lordships summarised the position like this:

"The effect of the aforesaid provisions may be stated thus: A state Government means the Governor; the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions; the Governor made rules enabling the Minister-in-Charge of particular department to dispose of cases before him and also authorising him, by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the Department."

12. Learned Deputy Government Advocate contends that this authority does not help the petitioners as it did not lay down that the Minister alone was the authority to dispose of the objections and approve the scheme, because in that

authority the Supreme Court did not consider the scope of any provision like Rule 54 of Rajasthan Business Rules which itself authorises the Governor to issue the supplementary instructions on the advice of the Chief Minister for disposing of the business in the Secretarial Department specified in the first schedule. His contention is that the impugned order issued by the Governor appointing the Joint Legal Remembrancer must be deemed to have been made by the Governor in exercise of his powers vested in him by virtue of Rule 54 of the said Rules and this order must be taken to be a supplementary instruction issued by the Governor for disposing of the cases relating to Section 68-D(2) of the Act in the Legal Remembrancer Office and the Legal Affairs, Department

13. The order appointing the Joint Legal Remembrancer does not refer to Rule 54 of the Business Rules. It is mentioned in that order that the Governor has appointed the Joint Legal Remembrancer in pursuance of Rule 7(1) of the Rules of 1960. It is the requirement of Rule 7(1) itself that the appointment shall be made under the Business Rules. When the Governor while appointing the Joint Legal Remembrancer referred to Rule 7(1) it shows that he was doing so in pursuance of the Business Rules. It is not necessary for the Governor to mention as to which particular rule of the Business Rules was invoked by him to make such appointment. From the provisions of the Business Rules mentioned above it is evident that ordinarily if no specific order has been made by the Governor to appoint an authority to the proceedings u/s 68-D of the Act then the proper authority is the Minister under Rule 21 of the Business Rules to hear and dispose of the objections, but if the Governor had specifically issued any general or particular order or instruction in that behalf then we have to see whether such an order appointing the Joint Legal Remembrancer is within the competence of the Governor under the business Rules.

Under Rule 54 of the business Rules the Governor has an authority to issue supplementary instructions on the advice of the Chief Minister.

The Learned Deputy Government Advocate placed before the Court the Secretariat file to show why the necessity was felt by the Government to issue the said order of appointment of the Joint Legal Remembrancer. It appears from the record that a proposal was placed before the Chief Minister by the Minister concerned that in order to avoid any criticism against the Law Secretary-cum-Legal Remembrancer who held the office of the Chairman of the State Transport Authority, the Joint Legal Remembrancer may be assigned the task of disposing of the cases arising out of Section 68-D of the Act. The Chief Minister after agreeing with the proposal submitted the papers to the Governor and the Governor in pursuance of this advice of the Chief Minister issued the order which has been impugned before us. This is obviously an order of general nature appointing the Joint Legal Remembrancer to dispose of all the cases that may arise in relation with the provisions of Section 68-D of the Act and therefore the Learned Deputy Government Advocate is not unjustified in arguing that it should be taken as supplementary instruction issued by the Governor on the advice of

the Chief Minister. In view of these facts we are of opinion that the order dated 16-4-1965 appointing the Joint Legal Remembrancer was perfectly within the competence of the Governor and the proceedings taken by the Joint Legal Remembrancer to dispose of the objections of the petitioners in these writ petitions and accepting the scheme cannot be taken to be ultra vires of his powers. There is no force in the first objection of the petitioners

14. This brings us to the second contention raised by Mr. Jain. While addressing his arguments on this contention Mr. Jain divided it into two parts; Firstly it is argued that the Rajasthan State Road Transport Corporation constituted by the State Government under the Road Transport Corporation Act, 1950 was a different legal entity from the Rajasthan State Roadways and as such it could not step into the shoes of the Rajasthan State Roadways and proceed to pursue the scheme which was framed by the Rajasthan State Roadways for nationalising the route in question, and undertake to provide Road Transport service on the nationalised route. Secondly, the Corporation constituted under the Road Transport Corporation Act. 1950 cannot come within the definition of the State Transport Undertaking as defined in the Rules in pursuance of which the impugned scheme was framed by the Rajasthan State Roadways and which was ultimately approved by the Legal Remembrancer while functioning under the said Rules. According to Mr. Jain the Corporation by no stretch of imagination could be taken to be a State Transport Undertaking within the meaning of the Rules as the definition of the State Transport Undertaking given in the Rules limits the application of the rule only to State Transport Undertaking which is known as the Rajasthan State Roadways and therefore the Corporation could not frame or pursue any scheme as long as the Rules were in force. The scheme therefore, approved by the Joint Legal Remembrancer treating the Corporation as the State Transport Undertaking is wholly illegal and inoperative.

15. Mr. Jain while supporting the first branch of his argument that the Corporation could not be a successor to the Rajasthan State Roadways to pursue the draft scheme referred to the observations of the learned Chief Justice of the Supreme Court in the Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another, wherein it was observed:

"The Corporation, though statutory has a personality of its own and this personality is distinct from that of the State or other share holders. It cannot be said that a shareholder owns the property with which the Corporation is concerned The doctrine that a corporation has a separate legal entity of its own is so firmly rooted in our notions derived from common law that it is hardly necessary to deal with it elaborately; and so, prima facie the income derived by the appellant from its trading activity cannot be claimed by, the State which is one of the shareholders of the Corporation."

16. In this Supreme Court case it was claimed by the Corporation that it was owned and managed by the State and therefore its income must be deemed to

be the income of the State and should, therefore, be exempt from taxation. It was in this connection that the Learned Chief Justice had made the above observations. The law enunciated by this authority of the Supreme Court is not disputed by the learned Deputy Government Advocate also, but he says that even if the Corporation be taken to be a different entity from the Rajasthan State Roadways, it succeeded the business carried on by the Rajasthan State Roadways as its business was legally transferred to the Corporation by the State Government. There is no doubt that the Corporation constituted under the Road Transport Corporation Act, 1950, is a different entity from that of Rajasthan State Roadways which was a Department of the State but it does not mean that the Corporation could not be a successor of the Roadways. Our attention has been drawn to the administrative instructions issued by the State Government in exercise of the powers conferred by Section 34 of the Road Transport Corporation Act, 1950, whereby it was directed by the State Government that except the buildings, and other immovable property belonging to the Roadways Department all other properties of the Department including the stores, articles and other movable goods shall pass to the Corporation. Para 4 of these instructions specifically lays down that all the assets and liabilities of the Roadways Department shall pass to the Corporation and all rights and liabilities which have accrued or incurred or which may accrue or may be incurred under any contract made by the State Government or any officer of the Roadways Department duly authorised in this behalf in connection with or for any purchases of the Roadways Dept. prior to the 1st October, 1964 (when the Corporation came into being), which would have been the rights and liabilities of the Roadways Department shall be the rights and liabilities of the Corporation.

17. In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, similar question had arisen before the Supreme Court whether a Corporation which was constituted under the Road Transport Corporation Act and had taken over the business of the former Transport Undertaking was a successor to that undertaking or not. In that case before 9-1-1958 the Transport Deptt. of the State Government was managing the Transport Business on the nationalised routes. But after the Corporation was formed under the Road Transport Corporation Act, 1950 on the above date the administrative instructions were issued by the State Government u/s 34 of the said Act directing that the Corporation shall take over the management of the existing Road Transport Department of the Government of Andhra Pradesh. It was also mentioned in those instructions that all land and all stores, articles and other goods of the Road Transport Department shall pass to the Corporation. An objection was raised that the Corporation could not be a successor of the State Department to implement the scheme initiated by the former undertaking. Their Lordships while considering all these facts observed as follows:

""It is therefore clear from the said order that Government entrusted the management of the Road Transport Department to the Road Transport Corporation and directed the transfer of all assets and liabilities to the said

Corporation. The effect of the said order is that the State Corporation carries on the Road Transport business in the place of the State Transport Department which was functioning as the State Transport Undertaking under the Act before the said order. If there was no legal impediment in the Government transferring the business carried on by one of its departments and its assets to the Corporation the Corporation would be a successor to the pre-existing State Transport Undertaking."

18. In the present case the State Government had issued instructions in exercise of its powers u/s 34 of the Road Transport Corporation Act, 1950 to transfer to the Corporation all the assets and liabilities of the former Undertaking namely, the Rajasthan State Roadways. It has not been urged before us that the State Government had no authority to transfer the business of the Department to the Corporation. In the absence of any legal impediment in the way of the Government to transfer the business carried on by one of its Department and its assets to the Corporation it is difficult for us to accept the contention of the petitioners that the Corporation was not the successor of the former State Transport Undertaking. The corporation, in our opinion, succeeded the Rajasthan State Roadways. But the question is whether a successor of the former State Road Transport Undertaking is empowered under the Rules of 1960 to propose a scheme under Chapter IVA of the Act and as a successor of the Rajasthan State Roadways could it pick up the thread to pursue the scheme before the Legal Remembrancer or Joint Legal Remembrancer after 1-10-1964 from the stage it was left by the Rajasthan State Roadways when it became defunct.

19. The argument of Mr. Jain is that the scheme was framed by the Rajasthan State Roadways under the Rules of 1960 and the proceedings that were being taken by the Legal Remembrancer to dispose of the objections of the existing operators filed u/s 68-D(2) of the Act for the purposes of approving or modifying the scheme proposed by the Rajasthan State Roadways were also taken under the same Rules and subsequently when the Rajasthan State Roadways became defunct the Corporation also proceeded from that stage to pursue the scheme under the same Rules which according to him, was possible only if the Corporation came within the ambit of the definition of the State Transport Undertaking as given by the Rules themselves

20. Rule 2(e) defines the State Transport Undertaking as follows:

"State Transport Undertaking means any undertaking providing Road Transport Service where such undertaking is carried on by the Government of Rajasthan and includes Sirohi Motor Services, Sirohi and State Transport. Rajasthan, Abu Road. The State Transport Undertaking shall be known as Rajasthan State Roadways."

"The General Manager" has also been defined in the Rules as the General Manager of the Rajasthan State Roadways appointed by the Rajasthan State Government and includes any other officer who may be authorised by the State

Government to perform the functions of the General Manager, The contention of the learned counsel for the petitioners is that under Rule 3 the scheme could be prepared only by the General Manager of the Rajasthan State Roadways and the objections can be disposed of by the authority appointed under Rule 7 (1) of the said Rules only after hearing the objectors and the General Manager of the Rajasthan State Roadways Rule 8 also provides that the scheme after it is approved or modified shall be published in the Official Gazette in Form III. These provisions of the Rules, according to Mr. Jain, make it clear that no other body except the "Rajasthan State Roadways" which has been defined as the State Transport Undertaking under the Rules could make and pursue the scheme under the Rules. Mr. Rajnarain, on the other hand, contends that the State Transport Undertaking has been defined in Section 68-A of the Act and according to that definition of the "State Transport Undertaking" any Road Transport Corporation established u/s 3 of the Road Transport Corporation Act, 1950 will be the State Transport Undertaking. He further contends that even if the Corporation does not fall within the definition of State Transport Undertaking as given in the Rules it cannot be said that the Corporation constituted u/s 3 of the State Road Transport Corporation Act, 1950 is not a State Transport Undertaking competent to pursue the scheme prepared by the former Undertaking when the Corporation is undoubtedly a successor of the former State Road Transport Undertaking. It was also urged by Mr. Raj Narain that even if it is taken that the Rules of 1960 apply only to the scheme prepared by the Rajasthan State Roadways the draft schemes cannot be rejected by the Legal Remembrancer on the ground that the Rajasthan State Road ways have now become defunct, and in that event the Legal Remembrancer should have proceeded under the provisions of Section 68-C of the Act itself taking that no rules were framed u/s 68-1 of the Ad by the Government to approve the scheme prepared by the Corporation In other words he urged that the absence of Rules does not prohibit a successor to pick up the thread of the proceedings from where its predecessor has left it.

21. It is difficult for us to accept the contention of Mr Raj Narain that after the extinction of the Rajasthan State Roadways it should be taken that no rules were in existence and therefore the Legal Remembrancer or the Joint Legal Remembrancer had the authority to proceed with the objections directly under the provisions of the Act. Mr. Rajnarain drew our attention to Deep Narain Pandey and Others Vs. State of Bihar and Others, where Ramaswami C. J., held that the failure on the part of the State Government to make rules does not affect the legal validity either of the draft scheme or of the approved scheme. In that case the scheme was approved without framing any rules u/s 68-1 of the Act and a question therefore arose whether without framing the Rules under the said provisions of the Law a scheme could be accepted by the State Government. We agree with the proposition laid down by the Learned Chief Justice in that case that it was not necessary before framing a scheme that the rules must be framed u/s 68-1 of the Act but the proposition laid down in that case does not help the State Government in the circumstances of the present case, because we find that

the Rules had already been framed and these rules limited the scope of their application only to the scheme proposed by the Rajasthan State Roadways.

22. We have now to examine the contention of Mr. Raj Narain that after the Rajasthan State Roadways became defunct, whether the Rules of 1960 automatically lost their force and the State Government or its nominee was therefore free to ignore the Rules and proceed directly in accordance with the provisions of Section 68-C of the Act. A perusal of the Rules of 1960 shows that they are of general nature. They do not only deal with the framing of a scheme or with the disposal of the objections made in respect of the draft scheme by the Rajasthan State Roadways but they also deal with the matters consequential to the approval of the scheme. No doubt those rules could be applied only to the schemes made by the Rajasthan State Roadways but simply because the Rajasthan State Roadways became defunct, it is difficult for us to accept that the Rules were automatically repealed. The Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, has clearly observed:

"Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation; "see *Maxwell On the Interpretation of Statutes*", 10th Edn. pp. 50-51. The statutory rules cannot be described as or equated with, administrative directions". The rules of 1960 have been framed under the provisions of Section 68-1 of the Act though they have a limited function relating to the schemes framed by the Rajasthan Roadways yet they were part of the Act and they cannot be treated as if they were to hold the field as long as the Rajasthan State Roadways was functioning.

23. Mr. Raj Narain in support of his argument that the State Government even if the Rules of 1960 are not repealed could proceed to approve the scheme prepared or pursued by the Corporation u/s 68-C of the Act, relied on *B.N. Nagarajan and Others Vs. State of Mysore and Others*, In that case a question arose before the Supreme Court whether the State Government could make an appointment of a Government Servant without framing the Rules under the proviso to Article 309 of the Constitution. The Supreme Court laid down that the State Government enjoys the executive power in respect of List II and that it was not necessary that there must be a law already in existence before the executive is unable to function and that the powers of the executive are limited merely to the carrying out of the laws. Their Lordships observed that,

"We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law." But they further observed:

"It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary

to that rule or Act."

24. The argument of the learned Dy. Government Advocate could have some force if there were no rules in existence. In that event the Legal Remembrancer or the Joint Legal Remembrancer could have proceeded to approve the scheme or dispose of the objections in accordance with the principles laid down in Section 63-O of the Act, but when the statutory rules are in force, it is difficult for these authorities to ignore the Rules and proceed with the objection in derogation of the provisions of the Rules. We find that the State Government in the exercise of its powers conferred on it by Section 68-1 of the Act had already framed the Rules for carrying into effect the provisions of Chapter IV-A. These rules in our opinion were very much alive when the Raj. State Roadways became defunct and the Corporation was constituted. We also find that all the proceedings which were taken by the Legal Remembrancer or the Joint Legal Remembrancer before or after 1-10-1964 were under the provisions of these Rules and while proceedings under the Rules the Corporation was permitted to join the proceedings by the Legal Remembrancer to pursue the scheme from the stage it was left by the Rajasthan State Roadways. It has also been brought to our notice that even the appointment of the Joint Legal Remembrancer was made in pursuance of Rule 7(1) of the Rules of 1960, and the scheme after it was finally approved by the Joint Legal Remembrancer was also published u/s 68-D read with Rule 8 of the Rules of 1960 which is in form III prescribed by the Rules. This shows that the Joint Legal Remembrancer was proceeding under the provisions of these rules but he committed their breach when in place of the Rajasthan State Roadways he permitted the Corporation to play the role of a State Road Transport Undertaking.

In view of the definition of the State Transport Undertaking given in the Rules of 1960 none but the Rajasthan State Roadways could proceed with the scheme. The Corporation, in our opinion, could not be permitted to function as State Transport undertaking under the rules without their amendment. In this view of the matter we feel that the proceedings taken by the Legal Remembrancer and the Joint Legal Remembrancer after the Rajasthan State Roadways became defunct in allowing the Corporation as a party to those proceedings, were in contravention of the Rules and, therefore they were illegal and the scheme thus approved is, therefore vitiated.

25. Learned Deputy Government Advocate has urged that out of 17 petitions 13 petitions viz. No 414 of 1965; (Rajasthan Transport Corporation v. The State, 415/65 (Dulichand v. The State), 417/65 (Purshotam Paliwal v. The State), 418-65 (Mukb Gurdhandas v. The State and others), 420/ 1965 (Arawali Roadways v. The State and others), 421/65 (Zakir Hussain Ghulam v. The State and others"), 422/1965 (M/s. Refugee Transport Co. v. The State and others), 423/1965 (Verma Transport Co. v. The State and others). 424/1965 (Prabhat Bus Service v. The State and others), 426/1965 (Basant Kumar v. The State), 427/ 1965 (Poonamchand Kanhiya Lal Tak v. The State and others), 437/1965 Mohan

Singh v. The State and others) have become infructuous as the permits held by the existing operators who have filed these petitions have exhausted and therefore, no legal right is now left in them to challenge the validity of the scheme. It is admitted by Mr. Jain and Mr. Gupta appearing on behalf of the petitioners that the permits of the petitioners in the thirteen petitions have been exhausted but they contend that their applications for renewal are still pending before the Regional Transport Authority and therefore their right to get the permits renewed, if the scheme is declared illegal, still exists. We find that no prayer has been made by these petitioners for issuing any direction to consider their applications for renewal which are said to be pending before the Regional Transport Authority. In view of the fact that no legal right exists in the petitioners after the terms of their permits are over we cannot give them any relief and therefore, these petitions are dismissed as having become infructuous. We, however pass no order as to costs. The dismissal of these petitions would not have any bearing on the rights of the petitioners, if there be any for the renewal of the permits, if their applications are pending before the Regional Transport Authority

26. Since we have come to the conclusion that the Corporation had no right under the Rules of 1960 to pursue the draft scheme framed by the Rajasthan State Roadway before the Legal Remembrancer and the Joint Legal Remembrancer the scheme as approved by the Joint Legal Remembrancer in contravention of the Rules of 1960 is declared illegal. We, therefore allow the writ petitions Nos. 416, 436, 425 and 419 of 1965, and quash the scheme approved by the Joint Legal Remembrancer.

27. Writ Petition No. 539 of 1965 relates to the Jaipur-Bharatpur route. A scheme for nationalising this route was finalised in December 1960 and the permits of the petitioners held for Jaipur-Dausa-Senthal route were rendered by the Regional Transport Authority by its resolution dated 31-12-60 is ineffective between Jaipur and Lausa. This scheme came into force on 26-1-61. The Rajasthan State Roadways proposed to modify this scheme by publishing a draft scheme wherein it was proposed that the petitioner's permit must be curtailed upto Dausa. The petitioners filed objections to the proposed modification of the scheme. During the pendency of these objections the Rajasthan State Roadways became defunct and the Rajasthan State Road Transport Corporation came into existence and instead of Rajasthan State Roadways the Corporation joined the proceedings before the Legal Remembrancer as a result of which the objections of the petitioners were dismissed by the orders of the Joint Legal Remembrancer dated 3-5-1965 and 27-5-1965. The petitioners came immediately after the order of the rejection was passed by the Joint Legal Remembrancer to this Court seeking a writ of prohibition directing that the scheme as modified by the Joint Legal Remembrancer may not come into operation.

28. Since the objections are similar in this petition as we have decided in the above referred 17 writ petitions pertaining to Udaipur-Ahmedabad route, we

hold that the Rajasthan State Road Transport Corporation could not legally join the proceedings pending before the Joint Legal Remembrancer for the disposal of the objections filed by the petitioners u/s 68-D (2) of the Act and, therefore, the order of rejection of the objections passed by the Joint Legal Remembrancer at the instance of the Rajasthan State Road Transport Corporation vitiates the order. It is, therefore, quashed. The writ petition is accordingly allowed but without any order as to cost.