

**(1978) 03 MP CK 0019**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 1125 of 1975**

Narula Transport Service and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 28-03-1978**

**Acts Referred:**

General Clauses Act, 1897 — Section 6

**Citation :** (1980) ILR (MP) 1131 : (1978) MPLJ 654 : (1978) MPLJ 643

**Hon'ble Judges :** A.P. Sen, C.J.;G.P. Singh, J

**Bench :** Division Bench

**Advocate :** Y.S. Dharmadhikari, for the Appellant; V.S. Dabir with A.G. Dhande for Respondent No. 3 and J.M. Sood, Govt. Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.P. Sen, C.J.

This writ petition by certain operators affected by Scheme No. 82, is directed against an order of the Special Secretary to Government, Madhya Pradesh, Home Department, dated 5-6-1975, deferring consideration of their preliminary objection to the validity of the proceedings before him.

The Special Secretary, by the impugned order, has directed that he would deal with the preliminary objection, along with other objections, on merits, raised u/s 68-D of the Motor Vehicles Act, 1939.

The Madhya Pradesh State Road Transport Corporation (hereinafter referred to as "the Corporation") prepared Scheme No. 82 for nationalisation of as many as 25 routes specified therein. The Scheme was published in the Madhya Pradesh Rajpatra on 4-4-1975. The Scheme provides inter alia that:

Any person affected by the scheme may within 30 days of publication of the scheme in Madhya Pradesh Rajpatra file objections, if any, before the authority constituted by the State Government under Rule 136 of the Madhya Pradesh

Motor Vehicles Rules, 1974 in accordance with the procedure laid down in Rule 136 of the Motor Vehicles Rules, 1954.

Meanwhile, the State Government, by its order dated 6-3-1975, had authorised the Special Secretary to Government, Madhya Pradesh, Home Department (Nationalisation), Bhopal, as the officer authorised to receive objections u/s 68-D, but, unfortunately, the order was not published in the Madhya Pradesh Rajpatra till 20-6-1975. The Special Secretary had, in the meanwhile, issued a notice, dated 16-5-1975, notifying the date, time and place for hearing of the scheme on 7-6-1975. In response to the notice, we are informed that about 102 operators affected by the scheme, have preferred their objections. The objections were entertained by the State Government and they are being dealt with by the Special Secretary.

On 7-6-1975, when the scheme came up for consideration before the Special Secretary, who had been delegated the functions of the State Government u/s 68-D, to hear and decide objections, the Petitioners, who are persons affected by the scheme, raised a preliminary objection to the proceedings on the ground that since no authority had been notified under Rule 136(2), they were not aware of the Officer to whom objections could be addressed and, as a result, they Could not file any objection as required u/s 68-D. The objection was that the scheme, as published u/s 68-C, without there being an authority to whom objections could be addressed under Rule 136(2), could not be approved u/s 68-D(2), as, otherwise, the Petitioners would be deprived of the opportunity of filing their objection, if any u/s 68-D(1).

Shri Dharmadhikari, learned Counsel for the Petitioners, pressed before us the same objection, as was taken before the Special Secretary, viz., that he had no jurisdiction to proceed with the scheme u/s 68-D(2), unless they were afforded an opportunity to file their objection u/s 68-D(1). It is urged that with the framing of Rule 136(2) and Rule 138, there is a clear distinction between the authority to hear the objections to a scheme u/s 68-D(2) and the authority to receive objections to a scheme published u/s 68-C. The submission is that there is a difference between the ministerial act of receiving the objections, fixing the date, time and place for hearing of the objections, and the quasi-judicial function of hearing such objections u/s 68-D(2). It is urged that the Petitioners could not have filed their objections due to the failure of the State Government to notify the officer before whom such objections could be filed under Rule 136(2) within 30 days from the date of publication of the scheme u/s 68-C.

It is, however, strenuously urged by Shri Dabir, appearing on behalf of the Corporation, on the strength of the decision of the Supreme Court in *Sindhi Sahiti Multipurpose Transport Cooperative Society Ltd. Vs. State of Madhya Pradesh and Others*, that the objections that could be taken u/s 68-D of the Act are confined only to the four grounds of efficiency, adequacy, economy and proper co-ordination of road transport service. It is said that the preliminary objection raised by the Petitioners does not, therefore, fall within the four corners

of Section 68-D.

Section 68-D of the Act, in so far as material for our purpose, reads as follows:

68-D. Objection to the Scheme.-(1) On the publication of any scheme in the Official Gazette and in not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme,-

(i) any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme;

(ii) any association representing persons interested in the provision of road transport facilities, recognised in this behalf by the State Government; and

(iii) any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies; may within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport undertaking to be heard in the matter, if they so desire, approve or modify the scheme.

Section 68-1(1) and (2)(b) reads:

68-1. Power to make rules.-(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely;

(b) the manner in which objection may be filed under Sub-section (1) of Section 68-D.

The framing of Rule 136(2), as worded, really creates the difficulty. Before Rule 136(2) was framed, the matter was regulated by Rule 4 of the Madhya Pradesh State Road Transport Services (Development) Rules, 1959. The relevant provisions of Rules 135, 136 and 138 of the Madhya Pradesh Motor Vehicles Rules, 1974, are as follows:

135. Preparation and publication of scheme.-(1) Every Scheme shall provide for the following matters, that is to say,-

\* \* \* \*

(1) filing of objections to the Schedule before an officer authorised by the State Government by notification in this behalf.

Manner of filing objections.-(1) Any person affected by the Scheme and desirous of filing objection u/s 68-D of the Act, shall do so within a period of thirty days from the date of publication of the Scheme in form of a memorandum, in

duplicate, setting forth concisely the grounds of objections to the scheme.

(2) The memorandum of objections shall be addressed to such officer as may be authorised by the State Government by notification in this behalf.

Consideration and Disposal of objections.-(1) The Officer authorised by the State Government under Rule 136 above shall fix a date or dates, time and place for hearing of the objections and shall publish a notice in Form "N.S. IV specifying the date or dates, time and place so fixed not less than seven clear days before the date on which the first hearing of objections is to commence-

(a) in the Madhya Pradesh Gazette.

Rule 307 of the M.P. Motor Vehicles Rules, 1974, which repeals the M.P. State Road Transport Services (Development) Rules, 1959, is in these terms:

307. Repeal and savings.-On the commencement of these rules the C.P. and Berar Motor Vehicle Rules, 1940, the M.B. Motor Vehicles Rules, 1949, the Quwaide Motor Gadivan Riyasat, Bhopal, 1941, the Rajasthan Motor Vehicles Rules, 1951, Madhya Pradesh State Road Transport Services (Development) Rules, 1959, Madhya Pradesh Motor Accidents Claims Tribunal Rules, 1959, in force in any part of the State immediately before the commencement of these rules, shall stand repealed:

Provided that any thing done or any action taken under any of the said rules so repealed, shall be deemed to have been done or action taken under the corresponding provisions of these rules unless such thing or action is inconsistent with any of the provisions of these rules.

The impugned scheme cannot be struck down merely because the notification issued under Rule 136(2) of the M.P. Motor Vehicles Rules, 1974, was not published in the Madhya Pradesh Rajpatra till 20-6-1975, i.e. not within 30 days of the publication of the scheme u/s 68-C. u/s 68-D, an objection lies to the State Government. If no officer could be notified, as authorised under Rule 136(2) to receive objections u/s 68-D, the Petitioners were not without remedy. They could have presented their objections, if any, straightway to the State Government. That apart, learned Counsel for the Petitioners is not right in contending that no authority had been prescribed to receive objections u/s 68-D. The notification under Rule 136(2), issued on 6-3-1975, was to the effect:

In exercise of the powers conferred by Sub-rule (2) of Rule 136 of the Madhya Pradesh Motor Vehicles Rules, 1974, and in supersession of all notifications previously issued on the subject, the State Government, hereby authorise the Special Secretary to Government, Madhya Pradesh, Home Department (Notification) Bhopal for the purposes of the said sub-rule.

It will be noticed that the said notification was "in supersession of all notifications previously issued on the subject." If that notification was not published in the Madhya Pradesh Rajpatra in time, the earlier notification issued under Rule 4(2)

of the M.P. State Road Transport Services (Development) Rules, 1959, would still hold the field.

Rule 4 of the M.P. State Road Transport Services (Development) Rules, 1959, as it originally stood, itself appointed the Secretary to Government, Madhya Pradesh, Home Department, as the person to whom objections u/s 68-D should be addressed, Shri Dharmadhikari, at first, ingeniously tried to draw a distinction between an "appointment by the rule" and an "appointment under the rule." It was said that even if the appointment of the Secretary to Government, Madhya Pradesh, Home Department, under Rule 4(2), as an officer authorised to receive objections u/s 68-D, was a thing done within the meaning of Rule 307, it was done "by" the rule and not "under" the rule. While there is great force in that submission, it must be said to the credit of Shri Dharmadhikari that he drew our attention to the fact that Rule 4 of the Madhya Pradesh State Road Transport Services (Development) Rules, 1959, had undergone certain vital changes.

Rule 4 of the M.P. State Road Transport Services (Development) Rules, 1959, was twice amended. The first amendment, published in the M.P. Gazette (Extraordinary) dated 23-2-1963, was to the effect:

Bhopal, the 23rd February 1963, Phalguna 4, 1884. No. 1546-II-A (2).-In exercise of the powers conferred by Sections 68 and 68-I of the Motor Vehicles Act, 1939 (IV of 1939), the State Government hereby makes the following further amendments to the Madhya Pradesh State Road Transport Services (Development) Rules, 1959, the same having been previously published as required by Sub-section (1) of Section 133 of the said Act, namely,-

In Rule 4-

(a) in Sub-rule (4) for the words "Any person who desires to file objections", the words "Any person affected by the scheme and desirous of filing objection" shall be substituted;

(b) in Sub-rule (2) for the word "Secretary" the word "Special Secretary" shall be substituted and after the words "Home Secretary" the word "Gwalior" shall be inserted.

The second amendment, published in the M.P. Rajpatra Part IV, dated 7-8-1970, was as under:

Notification No. 2723-47-31-II-A (2), dated 29th July 1970.-In exercise of the powers conferred by Sections 68 and 68-I of the Motor Vehicles Act, 1939, (IV of 1939), the State Government hereby makes the following further amendments to the Madhya Pradesh State Road Transport Services (Development) Rules, 1959, the same having been previously published as required by Sub-section (1) of Section 133 of the said Act, namely:

In the said rules,-

(1) in Rule 4, in Sub-rule (2), for the words "Special Secretary to Government,

Madhya Pradesh, Home Department, Gwalior" the words "Officer appointed by the State Government in this behalf to be called the Special Secretary to Government, Madhya Pradesh, Home Department" shall be substituted.

Under the amended Sub-rule (2) of Rule 4 of the M.P. State Road Transport Services (Development) Rules, 1959, the State Government in the Home Department, by notification No. 2358/II-A (2), dated 21-9-1970, had appointed the Secretary to Government of Madhya Pradesh, Law Department to be Special Secretary to the Government, Madhya Pradesh, Home Department, for the purpose of the said rule. The appointment so made was undoubtedly an appointment under Rule 4(2) of the M.P. State Road Transport Services (Development) Rules, 1959, and, therefore, it was a "thing done" or "action taken" within the meaning of Rule 307 of the M.P. Motor Vehicles Rules, 1974. A saving clause that preserves the operation of repealed Act for "things done or omitted to be done" even in the absence of other savings as contained in Section 6 of the General Clauses Act, is liberally construed: *Shri Ram Prasad (Deceased) by his Legal Representative Vs. The State of Punjab*, . Such a saving clause has been interpreted to preserve the legal effects and consequences of the things done though these effects and consequences project into post repeal period: *Universal Imports Agency and Another Vs. The Chief Controller of Imports and Exports and Others*, , *Hasan Nurani Malak Vs. Assistant Charity Commissioner, Nagpur and Others*, . *Singh on Statutory Interpretation*, 2nd Edition, pp. 366-7.

By virtue of the proviso to Rule 307, anything done or any action taken under the repealed Rule 4(2) of the M.P. State Road Transport Services (Development) Rules, 1959, shall be deemed to have been done or action taken under the corresponding provisions of the M.P. Motor Vehicles Rules, 1974, i.e. Rule 136 thereof. The conclusion is, therefore, inescapable that there was an officer duly authorised by the State Government under Rule 136(2) of the M.P. Motor Vehicles Rules, 1974, to receive objections, if any, u/s 68-D of the Motor Vehicles Act, 1939. The contention of the Petitioners as to the validity of the proceedings before the Special Secretary to Government, Madhya Pradesh, Home Department, is therefore, wholly unfounded.

The result, therefore, is that the writ petition fails and is dismissed with costs. Hearing fee Rs. 150, if certified.