

(1965) 08 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 116 of 1965

Premchand Jain

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 27-08-1965

Acts Referred:

Constitution of India, 1950 — Article 166(3), 226, 227, 32
Motor Vehicles Act, 1939 — Section 133A, 68C, 68D, 68D(2)

Citation : AIR 1966 MP 117 : (1966) 11 MPLJ 305

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : M.N. Phadke, R.K. Tankha and P.C. Pathak, for the Appellant; M. Adhikari, General and R.J. Bhawe, Government Advocate for Nos. 1 and 2 and K.A. Chitale and V.S. Dabir for No. 4, for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.

This petition under Articles 226 and 227 of the Constitution is mainly directed against-

(i) an order dated 2nd February 1965 whereby R. S. Shukla, Special Secretary to the State Government in the Home Department, approved u/s 68D (2) of the Motor Vehicles Act, 1939 (hereinafter called the Act), Schemes Nos. 2, 4, 5, 7 and 9 with certain modifications, all these Schemes having been prepared and published earlier u/s 68C of the Act;

(ii) the subsequent publication of Scheme No. 2 in the Official Gazette dated 12th February 1965 as required by Section 68D (3) of the Act; and

(iii) a notice dated 26th February 1965 Issued u/s 68F (2) of the Act by which certain permits held by the petitioner for some routes covered by Scheme No. 2 were cancelled.

In Miscellaneous Petition No. 126 of 1965, some other existing operators have claimed similar reliefs in regard to the same Scheme No. 2. For like reliefs, similar Miscellaneous Petitions, Nos. 129 and 159 of 1965 in regard to Scheme No. 4, No. 171 of 1965 in regard to Scheme No. 5, Nos. 157, 165, 169, 170 and 243 of 1965 in regard to Scheme No. 7 and Nos. 137, 149, 158 and 168 of 1965 in regard to Scheme No. 9 have also been filed by some existing operators affected by those Schemes.

The petitioner in this case has, in Addition, called in question Scheme No. 2 as initially published u/s 68C of the Act and also challenged the vires of the Explanation inserted u/s 68D (1) of the Act and the validity of Rule 6 of the Rules framed u/s 681 of the Act. The aforesaid Explanation and Rule 6 and the Schemes Nos. 5, 7 and 9 as published u/s 68C of the Act have been assailed in Miscellaneous Petitions Nos. 165, 168, 169, 170, 171 and 243 of 1965 also.

This order shall dispose of all the above-mentioned fourteen petitions.

All these petitions are a sequel to our order dated 23rd December 1964 in Premchand Jain Vs. State of M.P. and Others, . By that order, we disposed of thirty-two Miscellaneous Petitions, including the one filed by the petitioner in this case. The facts leading to those petitions are set out in paragraphs 2 to 6 of our earlier order and need not be re-stated in detail. We may, however, state that, by those petitions, some existing operators called in question, broadly speaking, the various steps which had been taken under the machinery provisions of Chapter IVA of the Act and the rules made thereunder for approving certain Schemes prepared for enabling the State Transport Undertaking to provide passenger transport services on certain routes to the complete or partial exclusion of all other persons. By our order dated 23rd December 1964, we quashed the orders modifying Schemes Nos. 2, 4, 5, 7 and 9, the approved Schemes as published in the Official Gazette and the orders passed and notices issued u/s 68F (2) of the Act. In so doing, we proceeded on only one ground. We held that, although, R. S. Shukla, Special Secretary, had been authorised to dispose of the objections received in respect of those Schemes, he had not been authorised to approve or modify them.

In order to correct the errors and omissions noticed in the earlier order, the State Government amended Supplementary Instruction No. 2 issued under Rule 13 of the Rules of Business and Rule 7 of the Government Business (Allocation) Rules which had been made under Article 166 of the Constitution. Further, under the amended Supplementary Instruction No. 2, the Chief Minister expressly authorised the Special Secretary to exercise the powers of the State Government u/s 68D of the Act to approve or modify the Schemes and also to take all further steps towards that end.

Supplementary Instruction No. 2, as amended on 1st January 1965, reads as follows :

"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 powers 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 68D of the Motor Vehicles Act, 1989. "

Rule 7 of the Madhya Pradesh Government Business (Allocation) Rules, as amended on 1st January 1965, reads :

"Save in cases where an Officer has been specially empowered to sign an order or instrument of the Government of Madhya Pradesh, every such order or instrument shall be signed by either the Chief Secretary, Additional Chief Secretary, Special Secretary, a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under-Secretary, an Additional Under-Secretary or an Assistant Secretary to the Government of Madhya Pradesh and such signature shall be deemed to be the proper authentication of such order or instrument. "

The Chief Minister, by several orders passed by him on 1st January 1905, authorised R. S. Shukla, Special Secretary, in these terms :

"In pursuance of Supplementary Instruction No. 2 issued under Rule 13 of the Rules of Business of the Executive Government of Madhya Pradesh and in continuation of the Home Department Order No. 2876-1659/II-A (2), dated the 4th April 1963, I, Dwarika Prasad Mishra, Chief Minister of Madhya Pradesh, hereby direct that Shri R. S. Shukla, Special Secretary to Government of Madhya Pradesh shall in exercise of the powers conferred on the State Government u/s 68-D of the Motor Vehicles Act, 1939 (IV of 1939), approve or modify the scheme specified in the schedule attached to this order and also take all further steps towards that end including publication with or without the approval of the

Central Government, as the case may be.

(Sd.) D. P. MISHRA, Chief Minister, Madhya Pradesh."

After the Special Secretary was authorised in the manner stated in the last paragraph, he issued notices dated 7th January 1965 to the operators concerned to the effect that the various Schemes would be taken up by him on 30th January 1965 for approval or modification u/s 68-D of the Act, Many existing operators, including the petitioners, appeared and raised certain objections before the Special Secretary who, overruling them, passed the impugned order dated 2nd February 1965. Those Schemes as modified by the order just mentioned, were duly published in the Official Gazette dated 12th February 1965. Thereafter, for the purpose of giving effect to those approved Schemes, further action was taken u/s 68-F (2) of the Act.

The approved Schemes and the further action taken to give effect to them have been called in question on several grounds mentioned in the fourteen petitions. The common grounds of challenge may be grouped under the following heads :

- (i) The initial publication of the Schemes u/s 68-C of the Act is bad.
- (ii) The Explanation u/s 68-D (1) of the Act, inserted by the State Act 2 of 1963, is ultra vires.
- (iii) The new Rule 6 of the Rules framed under the Act is bad because it is in conflict with the provisions of Section 68-D (2) of the Act.
- (iv) The Special Secretary had no jurisdiction to hear objections or to approve or modify the Schemes.
- (v) Before approving the Scheme, the Special Secretary did not give to the petitioners an opportunity of being heard though he was bound so to do u/s 68-D (2) of the Act.
- (vi) Some of the Schemes offend Article 14 of the Constitution in that like have not been treated alike.
- (vii) In certain respects, the Schemes as finally approved and published are not in accord with the order dated 2nd February 1965.

In support of these petitions only the fourth and the fifth grounds were urged before us and all other grounds enumerated in the last paragraph and also those raised in the several petitions, and not mentioned in that paragraph, were not pressed.

The fourth ground relating to want of jurisdiction, as it was argued before us has three limbs. The first of these is that, since the State Government did not create or establish, as required by Section 133-A of the Act, a separate Motor Vehicles Department for the purpose of carrying into effect the provisions of the Act, neither could that department be allocated under the Rules of Business nor could, in pursuance of these Rules, any action be taken under Chapter IVA of the

Act. There is, we think, no substance in this contention. Section 133A *ibid* reads:

"133A (1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code (XLV of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers."

The provisions of this section, which enable the State Government to establish a Motor Vehicles Department, are not obligatory and do not inhibit the discharge of governmental functions enjoined by the Act in the usual way in accordance with the Rules of Business: AIR 1945 156 (Privy Council) . In this connection, we may point out that the provisions of Chapter IVA of the Act could be competently enacted by the Parliament under Entry No. 21 "commercial and industrial monopolies, combines and trusts" and Entry No. 35 "mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied" of the Concurrent List: H.C. Narayanappa and Others Vs. The State of Mysore and Others, . Since the executive power of a State extends to all matters with respect to which the Legislature of the State has power to make laws, the business of a State Government is allocated in pursuance of the entries in the State and Concurrent Lists. In the case before us, Entry No. 21 of the Concurrent List appears as Item 24 of the Commerce and Industry Department and Entry 35 of that List appears as Item 14 of the Home Department in the rules relating to allocation of business. As we would show in the sequel, the Chief Minister could authorise any Secretary to dispose of any item of business allocated to any department.

The second limb is that, prior to 1 January 1965, when the Supplementary Instruction No. 2 issued under Rule 13 of the Rules of Business was amended, even the Chief Minister had no power to authorise a Special Secretary to dispose of any item of business allocated to a department and, therefore, under the purported exercise of power by the powerless Chief Minister, the Special Secretary did not acquire jurisdiction to deal with the matter. In our opinion, even this contention is without force. Supplementary Instruction No. 2, as amended on 9th February 1962, reads as follows:

"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 if the Chief Minister or the Minister-in-charge so directs;

(ii) by any other or 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 hear parties, make such enquiry and take such other action as may be necessary for or incidental to reaching a decision in the case."

Under Clause (ii), the Chief Minister could authorise "any other Secretary" to dispose of any particular business allocated to a department. We think that the expression "any other Secretary" is in amplitude sufficiently wide to include a Special Secretary. That being so, it was competent to the Chief Minister to so authorise him even before 1st January 1965. It is true that, on that date, the aforesaid Clause (ii) was amended to specify that the Chief Minister could authorise in that behalf "the Chief Secretary or Additional Chief Secretary or Special Secretary", but we think that it was so done to clarify the position by way of abundant caution and, having regard to the amplitude of the expression employed in the unamended Clause (ii), we decline to assent to the proposition that it did not include the Special Secretary and that the amendment imported a change in that position.

The third limb is that the giving of an opportunity to be heard is an integral part of the process of approving or modifying a scheme u/s 68D(2) of the Act, that the Special Secretary could not have been authorised only to dispose of the objections to the Schemes Nos. 2, 4, 5, 7 and 9 without being simultaneously empowered to approve or modify them and that, in these circumstances, his action in disposing of the objections was without jurisdiction. This argument must be rejected on two grounds. In the first place, there is no basis in law or principle for the assumption that the authority to hear and dispose of objections and the power to approve or modify the Schemes in respect of which they were made must be given simultaneously and cannot be given successively. If the same authority, who has approved or modified a scheme, gave a personal hearing in regard to the objections made thereto and grounded his final order relating to the scheme on his decision on those objections, there is no division of responsibility destructive of the concept of judicial hearing and there can also be no question of wants of jurisdiction for acting in disregard of that concept in the sense indicated in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, . It is quite another matter if a competent authority, duly authorised in that behalf, approves or modifies a scheme without affording to the objectors any hearing as contemplated by Section 68D(2) of the Act.

Secondly, the petitioners obtained the judgment of this Court in *Premchand Jain Vs. State of M.P. and Others*, on the basis of the contention, which we accepted,

that the delegation made to the Special Secretary under the Rules of Business was limited to disposal of the objections and did not extend to approval or modification of the Schemes and they cannot now be permitted to take a contrary stand that even that limited delegation could not be made. Shri Phadke, learned counsel for some of the petitioners, relied upon the *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, to contend that the rule of constructive res judicata, which is a special and artificial form of res judicata enacted by Section 11 of the Code of Civil Procedure, cannot be applied to writ petitions filed under Article 32 or Article 226 of the Constitution. In this connexion, the counsel drew our attention to the fact that this aspect of the question relating to want of jurisdiction was not specifically raised or decided earlier in *Premchand Jain Vs. State of M.P. and Others*, . In the case of *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, , the Supreme Court was dealing with a tax matter and the question was whether the point in regard to the validity of the increase in the rate of tax from 3 pies to 9 pies per ton, which had not been taken in the petition for an earlier year, could not be allowed to be raised for another year on the principle of constructive res judicata. This is what their Lordships stated:

"In the present appeals, the question which arises directly for our decision is: does the principle of constructive res judicata apply to petitions under Article 32 or Article 226 where the dispute raised is in respect of a year different from the year involved in a prior dispute decided by this Court? We have already noticed the points actually decided by this Court against the appellants on the earlier occasion (vide *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, . One of the points sought to be raised was in regard to the validity of the increase in the rate of tax from 3 pies to 9 pies per ton; and since this point had not been taken in the petition and relevant material was not available on record, this Court refrained from expressing any opinion on it. The appellants contend that the order passed by this Court refusing permission to the appellants to raise this point on the earlier occasion does not mean that this Court has decided the point on the merits against the appellants; it may mean that the appellants were given liberty to raise this point later; but even otherwise, the point has not been considered and should not be held to be barred by constructive res judicata. It is significant that the attack against the validity of the notices in the present proceedings is based on grounds different and distinct from the grounds raised on the earlier occasion. It is not as if the same ground which was urged on the earlier occasion is placed before the Court in another form. The grounds now urged are entirely distinct and so, the decision of the High Court can be upheld only if the principle of constructive res judicata can be said to apply to writ petitions filed under Article 32 or Article 226. In our opinion, constructive res judicata which is a Special and artificial form of res judicata enacted by Section 11 of the CPC should not generally be applied to writ petitions filed under Article 32 or Article 226. We would be reluctant to apply this principle to the present appeals all the more because we are dealing with cases

where the impugned tax liability is for different years.") (At pp. 188-9 (of SCR) : (at p. 1020 of AIR)

The case before us is not a tax matter. Further, their Lordships laid down that the principle of constructive res judicata should not generally be applied to writ petitions filed under Article 32 or Article 226. In our opinion, their Lordships should not be regarded as forbidding its application to the facts and circumstances of this case when, in somewhat similar circumstances, they had themselves invoked its aid. So, in Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, their Lordships observed:

"The next question is whether the State Government, in the present case, acted in violation of the said principles. The argument that as this Court held in the previous stage of this litigation that the hearing given by the Secretary in charge of the Transport Department offended the principles of natural justice, we should hold, as a logical corollary to the same, that the same infirmity would attach to the Chief Minister. This argument has to be rejected on two grounds: firstly, for the reason that on the last occasion the appellants did not question the right of the Chief Minister to decide on the objections to the scheme,--and indeed they assumed his undoubted right to do so--but canvassed the validity of his order on the basis that the Secretary, who was part of the Transport Department, gave the hearing and not the Chief Minister, and, therefore, a party to the dispute was made a judge of his own cause. If, as it is now contended, on the same reasoning the Chief Minister also would be disqualified from deciding the dispute, that point should have been raised at that stage; instead, a distinction was made between the Secretary of a department and the Chief Minister, and the validity of the order of the Chief Minister was questioned on the basis of this distinction. This Court accepted that argument. Having obtained the judgment of this Court on that basis, it could not be open to the appellants, at this stage, to re-open the closed controversy and take a contrary position."

(At p. 588) of SCR: (at p. 1380 of AIR).

In our opinion, the petitioners cannot now be permitted to take the contrary position that the Special Secretary could not be authorised at all to dispose of the objections filed against the Schemes published u/s 68C of the Act.

As indicated earlier, the only other ground pressed before us is that the petitioners were not given an opportunity of being heard in support of their objections in accordance with the requirements of Section 68D(2) of the Act. In this connexion, our attention was drawn to the following passage from our judgment in Premchand Jain Vs. State of M.P. and Others, :

"The condition precedent for validly approving or modifying any schemes under Sub-section (2) of Section 68D is that there should be an enquiry consistent with the principles of natural justice. This means that not only one and the same person should hear the objections and approve or modify the schemes but he must also have been clothed with the necessary authority to hear those

objections as well as to approve or modify the schemes. The infirmity in this case is that, though the Special Secretary has purported to modify the schemes, he was not authorised so to do."

(Para 18)

Relying on these observations, Shri Phadke, who appeared for the petitioners, argued that the condition precedent for validly approving or modifying any scheme u/s 68D (2) of the Act was that there should be an enquiry consistent with the principles of natural justice; that one and the same person should hear the objections and approve or modify the schemes and that he must also have the necessary authority to hear the objections as well as to approve or modify the schemes; that the Special Secretary was authorised only to dispose of the objections and he was not authorised to approve or modify any schemes and that, when his orders modifying the various schemes, which were the result of enquiry necessary for making them valid and were inseparable from it, were quashed, there was no partial certiorari and the entire enquiry previously held by him and his decisions on the petitioners' objections came to an end. In this situation, as Shri Phadke contended, when the matter came up for a fresh consideration after our decision in *Premchand Jain Vs. State of M.P. and Others*, , he was bound to enquire into and adjudicate upon the objections afresh before approving or modifying the schemes. According to Shri Phadke, the Special Secretary not only did not do so but he did not also hear the petitioners' arguments on the objections they had preferred earlier and treated the matter of approving or modifying the various schemes as one of policy. In any event, so the Counsel argued, even if the certiorari be regarded as partial, the process of giving to the objectors an opportunity of being heard in support of their objections and of approving or modifying the schemes cannot be split up into parts because the relevant enactment imposes on the State Government the duty to act quasi-judicially in approving or modifying the schemes and, if the final orders approving or modifying the schemes were quashed, the reasons that led to the passing of those orders, including the conclusions reached on the objections, must also be regarded as having been annulled by this Court.

It is contended before us that even in this way of looking at the matter, the Special Secretary had to give to the petitioners a fresh hearing ab initio, but he declined so to do or to give them any hearing. It is strongly urged before us that the result of this wrong view was that the petitioners did not get any hearing such as is contemplated by Section 68D(2) of the Act and, therefore, as laid down by the Supreme Court in *Malik Ram Vs. State of Rajasthan*, , the approval or modification of the schemes made without such hearing cannot be sustained.

In answer, Shri Chitale, learned counsel for the Madhya Pradesh State Road Transport Corporation, argued that the order passed by us in *The Collector Vs. Chaturbhuj Panda and Others*, can be explained only on the basis of partial certiorari which, as laid down by the Supreme Court in *Y. Mahaboob Sheriff and sons, Y. Mahaboob Sheriff and Others and S. Shamsoddin and Others Vs. Mysore*

State Transport Authority, Bangalore and Others, could be granted in appropriate cases. The counsel further submitted that, as a result of our decision in Premchand Jain Vs. State of M.P. and Others, , the following points have crystallised:

- (i) The proceedings were not void ab initio.
- (ii) The Special Secretary was authorised to hear and dispose of the objections which were preferred by the petitioners against the five Schemes.
- (iii) He was not authorised to approve or modify any scheme.
- (iv) He afforded to the petitioners an adequate opportunity of being heard in support of their objections without disregarding the rules of natural justice.
- (v) Vice entered into the proceedings after this stage when he purported to modify the schemes without being authorised to do so.
- (vi) The record remained and the certiorari was restricted to the final orders modifying the schemes and the proceedings subsequently taken in pursuance thereof.

It followed necessarily from these premises, so Shri Chitale argued, that the effect of quashing the final orders modifying the schemes was that the enquiry already held by him into the objections and his decisions thereon remained unaffected. Shri Chitale further urged that, as a matter of fact, the Special Secretary issued notices to the petitioners who were again given an opportunity of being heard, that they did not ask him to reappraise the evidence they had already led in support of their objections, that their objections about change of circumstances of the State Road Transport Corporation after the earlier approval of the schemes were found to be unspecific and vague and that thus he duly considered and disposed of all those objections which were urged before him on 30th January 1965. According to Shri Chitale, Section 68D(2) of the Act does not require that there should be an order in writing about approval or modification of any scheme or that any reason need be given for it. Even so, the Special Secretary gave in this case detailed reasons for his order. It is thus a good enough order which should not be set aside only because it could have been made in a better way.

In our judgment, the position taken both by the petitioners and the respondents is extreme. But neither of the two positions is tenable. The duty placed on the State Government by Section 68D(2) is to consider the objections before approving or modifying a scheme. This means that the objections must be considered in relation to the question whether the scheme should be approved or modified. There cannot be a consideration of the objections in vacuo or in abstract, unrelated to the purpose for which the objections were invited. If this position is appreciated, then it is easy to see that the effect of our findings in Premchand Jain Vs. State of M.P. and Others, that the Special Secretary was validly authorised to perform the duty of affording the objectors a hearing and

had the authority to do all acts necessary for giving them a proper hearing within the mean of Section 68-D (2) and that he had no power to approve or modify the schemes, was that the Special Secretary could entertain and investigate into the objections to the schemes and hold an enquiry for the purpose, and that the power given to him to dispose of the objections was totally ineffective when he had not been empowered to approve or modify the schemes. It follows, therefore, that when the orders of the Special Secretary modifying the schemes in Premchand Jain Vs. State of M.P. and Others, were quashed, the result was that the enquiry and investigation held by the Special Secretary into the petitioners' objections remained intact, but his decisions on the objections, which formed the basis of the orders approving the schemes, came to an end. It was, therefore, incumbent on the Special Secretary to hear the petitioners on their objections which had already been investigated and to adjudicate upon them afresh before passing any orders with regard to the schemes.

The position is no different from one that obtains when the appellate Court sets a decision of the lower Court and remits the matter for a fresh decision on the evidence already on record on the issues that arose in that case and on fresh evidence that the parties may lead on any new issue arising therein. The Judge to whom the matter has been remanded is required to give a fresh decision on all the issues. He cannot dispose of the case with reference to the findings given by him earlier and which formed the basis of his earlier decision which was set aside by the appellate Court. In this connection, it would be pertinent to refer to the decision of the Supreme Court in Nehru Motor Transport Co-operative Society Ltd. and Others Vs. The State of Rajasthan and Others, . In that case, a final scheme published as approved by a duly authorised officer was quashed by the Rajasthan High Court in proceedings under Article 226 and the High Court sent back the matter to him for reconsideration. While pointing out that the order of the High Court was analogous to a remand and that the order passed by the said officer on reconsideration was a fresh order and not one reviewing his previous order, the Supreme Court made the following observation, which is very material here :

"It may be that the State Government had no authority to modify the decision of the Legal Remembrancer but when the High Court set aside the finally approved scheme as published on June 16, 1962, it meant that the decision of the Legal Remembrancer dated May 31, 1962, also came to an end, for the final scheme as published on June 16, 1962, was undoubtedly based on it, even though there were further changes in that decision at the time of publication."

(At p. 230) (of SCR) : (At p. 1101 of AIR)

In that case the Supreme Court also added that it was open to the aforesaid officer to take into account the evidence in regard to objections which had already been produced and it was not necessary that evidence should be given again particularly when no fresh issues arose. This is what the Supreme Court stated :

"In the present case the order of the High Court was analogous to a remand as understood in Courts of law. What the Legal Remembrancer did on the second occasion was to reappraise the evidence in the light of the law laid down by the High Court. There fore, it cannot be said that the decision of the Legal Remembrancer on August 17, 1962, is a review of his earlier decision dated May 31, 1962. It must be treated as a fresh decision, after the High Court had set aside the final scheme as published on June 16, 1962.

** ** It is urged that after the High Court set aside the final scheme as published on June 16, 1962, the Legal Remembrancer should have given a fresh hearing ab initio and that he did not do so. It is further urged that in as much as there is no provision in the Rules for compelling the attendance of witnesses whom an objector might like to produce, there can be no effective hearing of the objection, and, therefore, the scheme as finally published on August 31, 1962, is invalid. It is not disputed that the Legal Remembrancer did give a hearing to the objectors after the order of the High Court. What is urged however is that the objectors should have been allowed to give evidence afresh before the Legal Remembrancer finally disposed of the objections. We are of opinion that though the result of the order of the High Court was to set aside the order of the Legal Remembrancer dated May 31, 1962, it cannot be said that the order of the High Court wiped out the evidence which the objectors had given before the Legal Remembrancer on the first occasion. We have already mentioned the two grounds on which the High Court set aside the final scheme as published on June 16, 1962, and those grounds had nothing to do with the evidence which was already produced. In our opinion, it was open to the Legal Remembrancer to take that evidence into account and it was not necessary that evidence should be given again, particularly when no fresh issues arose ; nor was the Legal Remembrancer bound to take fresh evidence simply because the final scheme as published on June 16, 1962, had been set aside on account of certain technical and legal defects. When the objectors had been given full opportunity to lead evidence on the previous occasion which was still there for the Legal Remembrancer to take into account, it was sufficient for the Legal Remembrancer to hear the objectors' arguments in full after the order of the High Court in the light of the observations made by it, and the petitioners therefore, cannot have any grievance on the score that they were not given any hearing after the order of the High Court, If it is borne in mind that the order passed, by the High Court in the proceedings was in the nature of a remand order, all these objections will plainly be untenable."

(At pp. 230-1) (of SCR) : (At p. 1102 of AIR)

The decision in *Nehru Motor Transport Co-operative Society Ltd. and Others Vs. The State of Rajasthan and Others*, fully supports the view expressed above by us, namely, that the Special Secretary could act on the evidence already on record in regard to the petitioners' objections and that it was not necessary for him to take fresh evidence when no fresh issue arose, but that his previous

decisions on the petitioners" objections came to an end when his orders modifying the schemes were quashed in Premchand Jain Vs. State of M.P. and Others, .

In the impugned order, the Special Secretary said :

"The above observations and some other incidental observations occurring in the body of the judgment confining as they do the operative part of the High Court's order (Paras 25 and 26), clearly indicate that the High Court did not question the authority of the Special Secretary to hear and dispose of objections and to do other acts ancillary thereto. What was repelled was the claim that the Special Secretary had also been given the power to approve or modify the schemes. As a natural corollary, the Special Secretary's order to the extent that it modified the schemes was struck down as without jurisdiction. If the High Court were of the view that the Special Secretary had no jurisdiction of any kind in the matter not even to hear and dispose of objections--the High Court would have said so and not have been called upon to deal with the various points that arise in relation to the process of hearing and disposing of objections. In this context, all that remains to be done is to decide, what may be called the policy question, namely, whether in view of the decision taken on the various objections, the schemes in question should be approved, disapproved or modified to any extent. And this has to be done by a person who may possess the necessary authority of the State Government. There is absolutely no question of re-opening the case and to commence rehearing of the objections by giving a fresh notice. Since the Chief Minister has, in the meantime, conferred the required power on the Special Secretary, as already noted, the stage has reached where final order in terms of section 68-D (2) has to be passed."

"Since the objections filed u/s 68-D (1) have duly been disposed of and since there is no force in any of the points raised now before me, it only remains to pass final order in the exercise of State Government's powers u/s 68-D (2) conferred on me under the Business Rules."

The observation of the Special Secretary that if the High Court had taken the view that he had no jurisdiction to hear and dispose of the objections when he had no power to approve or modify the schemes, it would have said so, obviously proceeds on an erroneous idea of the concept of hearing and disposal of objections preferred u/s 68-D of the Act by persons affected. As we have endeavoured to point out earlier, the hearing and disposal of the objections cannot be in the abstract, divorced from the question of approval or modification of the scheme against which objections have been made. The earlier hearing and disposal of the objections by the Special Secretary when he had no power to approve or modify the schemes was purposeless and utterly ineffective. In observing that all that remained to be done was to decide a "policy question", namely, whether the schemes should be approved, disapproved or modified, the Special Secretary misconceived the nature of his functions in approving, disapproving or modifying the schemes. That function, as pointed out by the

Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and Malik Ram Vs. State of Rajasthan, , is a quasi-judicial function and not an administrative function. In the first case, the Supreme Court observed that the Motor Vehicles Act, 1939,

"imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme proposed by the Transport Undertaking".

It is implicit in the view taken by the Supreme Court in the second case that, before the State Government approves or modifies a scheme, it has to satisfy itself that the scheme would fulfil the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service and, if the objections are made with a view to showing that it would not fulfil that purpose, we do not see how the scheme can be validly approved or modified without regard to the view that may be taken about the objections. In our opinion, the whole process of giving to the objectors an opportunity of being heard in support of their objections to any scheme and of approving or modifying that scheme, as envisaged by Section 68-D (2) of the Act, is an integral and indivisible function. This is so mainly for two reasons. In the first place, the objections have to be dealt with in the light of the object intended to be secured by the scheme. Secondly, the whole approach has to be judicial. H.C. Narayanappa and Others Vs. The State of Mysore and Others, . It follows that the decision to approve or modify a scheme has to be grounded on the consideration whether it would serve the purpose mentioned in Section 68-C of the Act as judged in the light of the objections. The Special Secretary was, therefore, clearly in error in thinking that the final decision whether any scheme should be approved, disapproved or modified had to be taken by a reference to considerations of policy. He is bound to base his decision whether to approve, disapprove or modify any scheme on any conclusion that he comes to with regard to the objections. He cannot ignore that conclusion. The further statement of the Special Secretary that the objections filed by the petitioners u/s 68-D (2) have been duly disposed of and as there was no merit in any of the new points raised by the petitioners before him and it only remained for him to pass final orders with regard to the scheme, clearly shows that he gave no fresh consideration at all to the old objections already preferred by the petitioners and his mind was foreclosed by the conclusions on which he had founded his earlier orders with regard to the scheme and which were quashed by us in Premchand Jain Vs. State of M.P. and Others, . It is unnecessary to consider Shri Chitale's contention that Section 68-D(2) does not require that there should be an order in writing or that any reason in support of the order should be given. Whether a written order is necessary or an oral order is sufficient, it cannot be denied that, before the making of any order u/s 68-D (2), the State Government must give genuine consideration to the objections to the schemes. In the present case, the written order recorded by the Special Secretary makes it manifest that he did not consider and decide the objections afresh, and that the hearing he gave to the petitioners with regard to their objections was farcical. In our opinion, the order dated 2nd February 1965,

therefore, suffers from the infirmity that the petitioners were denied a hearing in the sense indicated above and their objections were not freshly dealt with in the light of the object intended to be secured by the schemes.

In the view we have taken of these cases, the petitions succeed and are allowed. The order dated 2nd February 1965, the publication of the Schemes Nos. 2, 4, 5, 7 and 9 in the State Gazette and the subsequent action taken in pursuance thereof u/s 68-F are quashed. These cases are remitted to the Special Secretary for a fresh decision in accordance with law with advertence to the observations we have made in this order. In each case, the petitioner or petitioners shall have his, or their costs and the security amount shall be refunded to him or them. Hearing fee in each case Rs. 100.