

(1992) 08 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Special Appeal No. 405, 406, 407, 408, 421 and 394 of 1992

R.L. Goyal and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-08-1992

Acts Referred:

Limitation Act, 1963 — Section 15

Motor Vehicles Act, 1988 — Section 100, 217, 97, 98, 99

Citation : (1992) 2 WLN 113

Hon'ble Judges : Rajendra Saxena, J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—All these special appeals involve common questions of law and facts, therefore, they are disposed of by this common judgment.

2. For the convenient disposal of all these appeals, the facts given in the case of R.L. Goyal v. The State of Rajasthan and Ors. D.B. Civil Special Appeal No. 405 of 1992 are taken into consideration.

3. The petitioner is an existing operator of the existing route Bharatpur to Basedi and holds one non-temporary stage carriage permit which is valid upto 20.11.1994. A draft scheme u/s 68-C of the Motor Vehicles Act, 1939 (referred to hereinafter as "the Act of 1939") was published in the Rajasthan Rajpatra dated 25.7.1986 inviting objections with regard to the aforesaid route. Formerly the Special Secretary (Home) was hearing the objections but vide notification dated 17.9.1990 the Secretary, Transport Department Rajasthan, Jaipur was appointed to hear and decide the objections. The Motor Vehicles Act, 1939 was repealed and a new Act, namely, the Motor Vehicles Act, 1988 (referred to hereinafter as "the Act of 1988") came into force with effect from 1.7.1989. It is alleged that according to Sub-section (4) of Section 100 of the Act of 1988 if an scheme is not published as an approved scheme under Sub-section (3) of Section 100 of the Act of 1988 in the official Gazette within a period of one year from the date

of publication of the proposal regarding the scheme in the official Gazette under Sub-section (1) then it shall lapse. In view of this provision of the Act of 1988 an application was moved before the Special Secretary (Home) that one year after publication of the proposed scheme has passed long back, therefore, the draft scheme has already lapsed. The Special Secretary (Home) rejected the application of the appellant and other co-existing operators of this route. Aggrieved against this a writ petition was filed by one Shri Suresh Chand Sharma which came to be registered as S.B. Civil Writ Petition No. 1410 of 1990 and an interim order was passed on 26.3.1990 restraining the concerned authority from taking any further proceedings u/s 100 of the Act of 1988 for approving, notifying and implementing the draft scheme of Bharatpur to Basedi. The aforesaid writ petition along with the appellant's writ petition came to be dismissed on 20.8.1990 by the learned Single Judge and the interim stay order passed on 26.3.1990 also stood vacated on 20.8.1990. Hence this appeal.

4. The learned Single Judge held that the final publication of the scheme is within a period of one year and the scheme has not lapsed in terms of Sub section (4) of Section 100 of the Act of 1988. The learned Single Judge has also found that the period during which the scheme was stayed by this Court has to be excluded and after excluding that period the publication of the scheme is within, limitation. Hence, the learned Single Judge dismissed the writ petition.

5. Mr. Vyas, learned Counsel for the appellants has submitted that the learned Single Judge has not properly interpreted the explanation read with Sub-section (3) and (4) of Section 100 of the Act of 1988. Learned Counsel submitted that according to Section 15 of the Limitation Act both the days when the stay order was granted and the day when the stay order was vacated have to be excluded and if this period is excluded then the scheme is beyond the period of one year. According to the learned Counsel the total period which has to be excluded should be 146 days and not 148 days. If 146 days is to be excluded then the scheme, which came to be published on 24.11.1990 in the official Gazette, then it is beyond 2 days and as such more than one year period has elapsed. Therefore, the scheme has automatically lapsed.

6. Learned Counsel next submitted that the scheme was published in the Rajasthan Rajpatra on 24.11.1990 and it was despatched from the Government Printing Press on 1.12.1990 and if the date of despatch is to be taken then too it is the beyond the period of limitation. Learned Counsel further submitted that the scheme has been published under the Rajasthan Motor Vehicles Rules, 1951, whereas the Rajasthan Motor Vehicles Rules, 1990 have come into force on 16.7.1990. Therefore, the publication of the scheme under the repealed Rules is also bad.

7. Learned Counsel next submitted that the scheme suffers from bias also as the objections were heard by the Secretary, Transport Department, Government of Rajasthan and he happens to be one of the members of the Board of Directors of the Rajasthan State Road Transport Corporation (hereinafter referred to as "the

Corporation"). Therefore, he is biased in favour of the Corporation and he cannot be a Judge in his own cause for hearing the objections.

8. In order to appreciate the contention of Mr. Vyas regarding the interpretation of the explanation read with Sub-sections (3) and (4) of Section 100 of the Act of 1988 it is necessary to reproduce here the provisions of Section 100 as a whole, which reads as under:

100. Objection to the proposal-(1) On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the area or route which is to be covered by such proposal and person may, within 30 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 such proposal.

(3) The scheme relating to the proposal as approved or modified under Sub-section (2) shall then be published in the Official Gazette by the "State Government marking such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided that no such scheme which relates to any inter State route shall be deemed to be an approved scheme unless it has the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under Sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under Sub-section (1), the proposal shall be deemed to have lapsed.

Explanation--In computing the period of one year referred to in this Sub-section, any period or periods during which the publication of the approved scheme under Sub-section (3) was held up on account of any stay or injunction by the order of any court shall be excluded.

9. Section 100 appears in Chapter VI, which relates to special provisions relating to State Transport Undertakings. Section 97 deals with the definition of road transport service. Section 98 gives an overriding effect to this chapter, namely, chapter VI over chapter V and other law for the time being in force. Section 99 deals with the preparation and publication of proposal regarding road transport service by the State Transport Undertaking, where any State Government is of the opinion that for the purpose of providing an efficient, adequate, economical

and properly co-ordinated road transport service and it is in the public interest that the road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport Undertaking whether to the exclusion, complete or partial of other persons or otherwise, the State Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deems fit. The idea is that previously the scheme used to be formulated by the State Transport Undertaking but by virtue of this amendment in the Act of 1988 it is the State Government which shall formulate the scheme if it deems fit that it will be in the interest of justice to provide an efficient, adequate, economical and properly coordinated road transport service for any route or any portion thereof then such scheme shall be published in the official Gazette by the State. This is a departure from the Act of 1939. After such a proposal having been published in the official Gazette then u/s 100 the objections are invited within 30 days from the date of its publication in the Official Gazette under Sub-section (1) of Section 100 of the Act of 1988. Sub-section (2) of Section 100 says that State Government may, after considering the objections and after giving an opportunity to the objector or his representative and the representative of the State Transport Undertaking, approve or modify such proposal (draft scheme). Sub-section (3) of Section 100 says that the scheme relating to the proposal which has been approved or modified then the same shall be published in the official Gazette by the State Government. It shall also be published in not less than one newspaper in the regional language circulating in the area or route covered by such scheme. On such publication in the Official Gazette the scheme shall be called as approved scheme and the area or the route to which it relates shall be called the notified areas or route. The proviso further provides that no such scheme which relates to any inter State route shall be deemed to be an approved scheme unless it has the previous approval of the Central Government. This is also a departure from the earlier Act of 1939 whereby the inter-State agreement could be made between the two States but here the proviso further qualifies that such inter-State scheme has to be approved by the Central Government. Sub-section (4) of Section 100 which starts from a non-obstante clause that notwithstanding anything contained in this section, if the scheme is not published as an approved scheme under Sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal (draft scheme) regarding the scheme in the Official Gazette under Sub-section (1), the proposal (draft scheme) shall be deemed to have lapsed. The plain and simple construction of Sub-section (4) is that the scheme which has been published as a proposal (draft scheme) under Sub-section (1) in the Official Gazette as required by Sub-section (3) of Section 100

and if the scheme has not been finally approved and published within a period of one year from the date of the publication of the proposal (draft scheme) in the official Gazette under Sub-section (1) of Section 100 then after expiry of the period of one year it will lapse.

10. The explanation to Sub-section (4) further says that for the purpose of computing the period of one year referred to in the Sub-section any period or periods during which the publication of the approved scheme under Sub-section (3) has been held up on account of any stay or injunction of any court then such period shall be excluded. Now, from a reading of Sub-sections (3) and (4) along with the explanation, the resultant position comes to that in case the publication of the draft scheme as a final or approved scheme has been held up on account of any order of the court then such period shall be excluded.

11. Mr. Vyas, learned Counsel has tried to emphasise that the expression approved scheme here should be taken as a final publication of the scheme under Sub-section (3) and the expression approved scheme appearing in the explanation is redundant. The expression approved scheme here has to be read in the context of Sub-section (3) and (4). The explanation to Sub-section (4) and Section 100(4) clearly says that if any draft scheme is not published within the period of one year then the same shall lapse. Therefore, the expression approved scheme in the explanation has to be read in conjunction with Sub-sections (3) and (4). The intention of the legislature was that in case the final publication is withheld on account of any stay or injunction of any court then for the purpose of computing the period of one year as required under subsection (4) that period has to be excluded. Therefore, if we read the explanation in the context of Sub-sections (3) and (4) then it appears that the only time period which has been spent on account of injunction or stay order passed by any court, withholding the finalising of the proposal/the draft scheme, that period should be excluded. In the scheme of the Act the intention of the legislature was to only exclude that period which has been spent on account of any injunction or stay order of the court for finalising the proposal/the draft scheme. Under Sub-section (4) it has clearly been laid down that the period of one year has to be counted from the date of publication of the proposal i.e. draft scheme in the Official Gazette under Sub-section (1). That means to say that the period has to be counted from the date of publication of the proposal i.e. draft scheme in official Gazette and if from the date of the publication of the draft scheme till it is finalised and published as finally approved scheme in the Official Gazette, if this process has been stayed by a competent court then that period has to be excluded. Thus, in this view of the matter, we are of the opinion that the period of one year has to be counted from the date of the publication of the proposal i.e. the draft scheme in the Official Gazette as required under Sub-section (1) of Section 100 and such finalisation of the draft scheme which has to be done after hearing the objections under Sub-section (1) and the same if approved or modified is published under Sub-section (3), if any period has been spent on account of stay or injunction order passed by any competent court then such period shall be excluded for

computing the period of one year, as required under Sub-section (4) of Section 100 of the Act of 1988. Thus, this appears to be real intention of the legislature behind enacting Section 100 of the Act of 1988. The Courts should see the intention of the legislature and should not confuse with the poor draftmanship of the Act. Here, as mentioned above, if we read the Section 100 as a whole the intention of the legislature appears to be that the period which has been spent on account of any stay order or injunction by a court for finalisation of the scheme then the same should be excluded for the purpose of computing the period of one year as required by Sub-section (4) of Section 100.

12. In this context, we are tempted to refer the observations made in the Cross Statutory Interpretation by Butter-worths at page 29, which read as under:

It is plain rule in Professor Dworkin's sense of the word, the judge must ask himself what is the natural or ordinary meaning of the word or phrase in question and apply it to the facts of the case unless the result is something which cannot reasonably be supposed to have been intended, by the legislature; but the rule is one which leaves a lot to the choice of the particular judge.

In this view of the matter, the contention of Mr. Vyas cannot be sustained and the same is overruled.

13. Now, the next question which was agitated before us is that even if it is assumed that the period spent on account of the stay order passed staying the finalisation of the scheme in the case of Suresh Chand Sharma, then too also the scheme is beyond the period of one year. In this connection learned Counsel has submitted that this scheme was stayed in the writ petition filed by Shri Suresh Chand Sharma on 26.3.1990. The stay order was vacated on 20.8.1990. According to Mr. Vyas, both the days i.e. date of grant of stay order and the date of vacation of the stay order have to be excluded then the total period spent comes to 146 days and if both the days are counted then it comes to 148 days. The draft scheme was published on 25.7.1986. Learned Counsel submitted that since the Motor Vehicles Act, 1988 came into force from 1.7.1989, therefore, the period of one year in the present case has to be counted from 1.7.1989 as has been held by this Court in the case of Phula Vs. State of Rajasthan, This was approved by their Lordships of the Hon'ble Supreme Court in the case of Krishan Kumar Vs. State of Rajasthan and others, . It was observed as under:

The essence of harmonious construction is to give effect to both the provisions. Bearing these principles in mind it is legitimate to hold that Section 100(4) prescribed period of limitation of one year in respect of the scheme proposed under the provisions of the new Act, while in the case of a scheme u/s 68-C of the old Act, pending on the date of enforcement of the new Act, namely, July 1, 1989, the period of one year as prescribed u/s 100(4) should be computed from the date of commencement of the new Act. This interpretation would give full effect to both the sections Section 100(4) and Section 217(2)(e) of the new Act.

14. Therefore, we have to compute the period of one year from 1.7.1989 when

the new Act came into force. The scheme was approved by the Special Secretary, Transport Department on 19.11.1990 and the same was published in the Rajasthan Rajpatra dated 24.11.1990. According to the petitioner, it was despatched to the subscribers on 1.12.1990. In this context, Mr. Vyas has raised two fold argument. First, both the days i.e. date on which the stay order was passed and the date on which the stay order is vacated, should be excluded from computing the period spent on account of the stay order or injunction of the court and second that the date of despatch should be taken to be the date of publication as the Gazette was despatched to the subscribers on 1.12.1990. In this connection Mr. Vyas has invited our attention to Bhag Chand v. R.T.A. Bikaner and Ors. D.B. Civil Special Appeal No. 78 of 1983, decided on 16.5.1983, Rajasthan State Road Transport Corporation, Jaipur v. Dau Dayal and Ors. D.B. Civil Special Appeal No. 210/1987, decided on 17.12.1987; Bagdawat Ram v. Regional Transport Authority and Ors. D.B. Civil Writ Petition No. 2807/88, decided on 5.9.1988 and Mool Chand Mandot v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 2186/1986, decided on 20.4.1992.

15. So far as the first part of the argument of Mr. Vyas is concerned, it is true that Section 15 of the Limitation Act clearly says that for the purpose of counting the period of limitation both days i.e. the date of grant of the stay order and the date when the stay order has been vacated have to be excluded. But that is a general Act which applies where there is no specific provision provided in the special Act. But in the present Act of 1988 the explanation is very clear and which says that any period which is spent on account of the stay order has to be excluded. Therefore, the explanation is very clear i.e. if any time which is spent on account of the stay order has to be excluded. When the stay order was passed on 26.3.1990 that means that the finalisation of the scheme could not have been progressed from 26.3.1990 and till 20.8.1990 when the stay order was vacated. That means the bare interpretation of the explanation would show that so long as the stay order is effective the Secretary could not have proceeded to finalise the draft scheme i.e. proposal. In fact, the day when the stay order was passed by the court the Special Secretary could not have proceeded to hear the objections and like wise till the last date i.e. 20.8.1990 he could not have proceeded. Therefore, in the special scheme of the Act the stay order will be effective from 26.3.1990 till 20.8.1990 and obviously both the days have to be excluded as that prevents the Secretary to proceed in the matter. Even if it has been vacated on 20.8.1990 it would not have been possible for the Secretary to have proceeded in the matter as unless the order is communicated to him and he comes to know about the contents of it and then he has to fix the date for hearing he objections of the objectors. Therefore, in the special scheme of the Act of 1988 which specifically provides that the time spent on account of the stay order or injunction has to be excluded, the general provisions of the Limitation Act will not be applicable and the explanation to Sub section (4) of Section 100 will hold the field. According to the explanation, both the days have to be counted as the Secretary could not have proceeded to finalise the scheme.

16. In this connection, reference may be made to the case of Mool Chand Mandot (supra) wherein it was held with reference to decision of the Hon''ble Supreme Court that stay order is effective from the day it is communicated to concerned authority. Hon''ble Supreme Court in the case of the Mulraj v. Murti Raghunathji Maharaj AIR 1967 SC 1366 observed as under:

Civil P.C. (1908), Order 41, Rule 5, Order 39, Rule 1 Sections 24 and 151 U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947), Section 3(1) Order of stay with reference to execution proceedings-Order is as much prohibitory order as order of injunction except with difference that order of stay is addressed to court while that of injunction is passed against party-Therefore, in case of stay order, as opposed to order of injunction, court to which stay order is addressed does not lose jurisdiction to deal with execution unless it had knowledge of stay-Even after stay is brought to its notice, it had power to set aside proceedings taken between time when stay order was issued and time when it was brought to its notice, if it is asked to do so and it considers that it is necessary in interest of justice that interim proceedings should be set aside Where no steps are taken to set them aside they remain good. (1896-97) 1 CWN 226 & AIR 1918 Mad. 391 & ILR (1960) Ker 528. Approved. ILR (1906) Cal 927 and AIR 1951 Pat 139 & Din Dyal Lakhi Ram Vs. Union of India (UOI) and Another, Overruled-Above principles apply with greater force to stay orders passed in transfer applications-But same may not apply to stay made for ministerial Officers-Held, order of staying proceedings relating to permission to file suit for eviction u/s 3(1) of Act 3 of 1947 by court to which application for transfer of proceedings was made not having been communicated to court granting permission, nor the appellant having applied for setting aside permission granted in ignorance of stay order, appellant could not challenge permission as nullity in suit which was based on such permission S.A. No. 2648 of 1964, D/- 20.4.1966 (All), Affirmed. (Paras 8 of 13).

17. In the present case before us, it is not known that when the stay order granted by this Court was communicated and when was its vacation communicated. Therefore, in the absence of these facts, it is safer to count both the days. Thus, in this view of the matter, we are of the opinion that the contention of Mr. Vyas cannot be sustained and the same is also overruled.

18. Next, it was contended by Mr. Vyas that the scheme shall be effective from the date of its despatch and in that connection, learned Counsel has invited our attention to Bhagchand v. R.T.A., Bikaner and Ors; R.S.R.T.C. v. Dau Dayal and Bhagdawal Ram v. R.T.A. (supra). All these three cases were decided under the Motor Vehicles Act, 1939, specially in the context of Section 68-D. There the objections have to be filed within 30 days from the date of publication of the draft scheme in the Official Gazette. It was argued in those cases that in fact, the Gazette was published but it was despatched to the subscribers even beyond 30 days period of filing of the objections. Therefore, the very purpose of filing the objections within 30 days from the date of publication of the draft scheme in the

Official Gazette stood frustrated as the Gazette itself was despatched to the subscribers from the Government Press beyond the period of 30 days. Thus, in that context, it was held on the basis of the facts that the publication should be treated from the date of despatch of the Gazette so as to enable the objectors to file the objections within 30 days. But here the scheme has been published finally and no further objections are required to be filed to the approved scheme in the Gazette. Once the scheme is published in the Gazette even its despatch later than that date will not affect the parties as nothing is required to be done by the parties. Therefore, it is wrong to contend that the date of publication in the present context should be taken to be the date of despatch i.e. 1.12.1990.

19. Mr. Munshi, learned Counsel for the respondents has submitted that there is no specific averment in the writ petition that whether in fact the Gazette was despatched on 1.12.1990 or not. As there is no specific affidavit in this case but the affidavit has been filed in the writ petition filed by Shri Suresh Chand Sharma. In that he has said that he has contacted the Press Superintendent but he declined to give him information and he made an enquiry from Dauji employee of the Government Press and he has informed him (Suresh Chand Sharma) that the Gazette was despatched to the subscribers for the first time on 1.12.1990. Mr. Raj Narain has seriously objected that such vague kind of affidavit should not be considered. But without going into that question, as mentioned above, in the present context the date of publication has to be the date of publication of the scheme, which was published on 24.11.1990. As such the approved scheme is effective from the date of publication i.e. 24.11. 1990 and the same as held above is within the period of one year after the exclusion of the period spent on account of the stay order granted by this Court in the case of Suresh Chand Sharma.

20. Mr. Vyas has next submitted that the scheme was published under the old Rules i.e. Rajasthan Motor Vehicles Rules, 1951 on 24.11.1990 vide Annex. 5 but meanwhile the new Rajasthan Motor Vehicles Rules, 1990 came into force on 16.7.1990.

21. Mr. Munshi has not disputed that the new Rules have come into force on 16.7.1990. But he submitted that a corrigendum has been issued on 28.2.1991 and the necessary amendment has been made that reference to the Motor Vehicles Rules, 1951 should be deleted and in its place the Motor Vehicles Rules, 1990 should be read. Be that, as it may, it is only a minor slip as Rule 6.5 is almost para materia to the old rule. As such this lapse is not material and the same has now been corrected by the corrigendum.

22. Lastly, Mr. Vyas has raised the argument of bias of the authority i.e. Special Secretary Transport who has decided the objections, as according to Mr. Vyas, he is one of the members of the Board of Directors of the Rajasthan State Road Transport Corporation. It is submitted that he received some pecuniary benefits for attending the meetings. As such learned Counsel submitted that a person who has some remote pecuniary benefit/interest to be derived by attending the

meetings of the Board of Directors cannot, therefore, be a judge in his own cause, i.e. in finalising the scheme. In this connection, Mr. Vyas, learned Counsel for the appellants, has invited our attention to K.R. Bhaskarnanda and etc. Vs. State of Karnataka and others,

23. As against this H.C. Narayanappa and Others Vs. The State of Mysore and Others, Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, ; Tej Ram and Others Vs. State of Rajasthan and Others, Raipur Transport Co. Pvt. Ltd. and Another Vs. The State of Madhya Pradesh and Others, and Prakash Chandra Sahu and Others Vs. Managing Director, O.R.T. Co. and Others,

24. We have gone through all the cases cited by the learned Counsel. It is true that in the case of K.R. Bhaskamanda (supra) a view has been taken that the authority, who is deciding the objection, should not be associated with the State Transport Undertaking and it is held that this suffers from official bias. As against this the Hon''ble Supreme Court in the case of H.C. Narayanappa observed as under:

Section 68-D undoubtedly imposes a duty on the State Government to act judicially in considering the objections and in approving or modifying the scheme proposed by the TRansport Undertaking.

It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias.

The Minister or the Officer of the Government, who is invested with the power to hear objections to the scheme is acting In his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he Is a limb of the Government.

25. Likewise in the case of J.Y. Kondala Rao, the Hon''ble Supreme Court observed as unden

Though under the provisions of the Act, the State Government has some control, if cannot be said either legally or factually that the State Road Transport Corporation, which is a body corporate having a perpetual succession and common seal, is a department of the State Government. The State Government, therefore, in deciding the dispute between the said Undertaking and the operators of private buses u/s 68 D (2) is only discharging its statutory functions and the decision of the Minister in charge of the portfolio of transport in approving the scheme of nationalisation of bus service by the State Road Transport Corporation cannot, therefore, be said to be vitiated by legal bias.

Nor is the fact that the Minister concerned presided over the sub-committee

constituted to implement the scheme or nationalisation of bus services, in itself, sufficient to establish that he was actuated by personal bias so as to disqualify him from hearing the objections under Chap-IVA.

26. In T. Govindaraja's case (supra), their Lordships of the Supreme Court observed as under:

Although the Secretary to Government, Home Department was a member of the Committee to prepare a scheme of road transport and published it, in his capacity as Secretary for industries, he cannot be said to be so biased, as to disqualify him from hearing objections u/s 68-D.

27. As against the weight of these observations made by the Hon^{ble} Supreme Court it is not proper to accept the view taken by the learned Single Judge of the Karnataka High Court. It is not necessary that an officer, who is appointed to hear the objections though he may be an ex-officio Director of the Corporation would necessarily suffer from any bias. What is bias is always a question of fact. Simply because he is a member of the Board of Directors and getting some remuneration for attending the meetings of the Board of Directors that would not necessarily lead to the inference that he suffers from bias so as to disqualify him from hearing the objections. Earlier these objections used to be heard by the Joint Legal Remembrancer, a Judicial Officer, but now the objections are being heard by the Special Secretary (Home). This is not known as to why this change has been effected, but we would like to observe that justice should not only be done it should appear to have been done. Therefore, in order to lend more objectivity and the litigants should not carry this impression in their mind that the person, who is deciding the objections, also derives some benefit by way of getting any allowances for attending the meeting of the Board of Directors of the Corporation. It would be proper that any person who is not even remotely associated with the Corporation should hear the objections. But now in the changed context this argument would not be of much relevance as earlier the scheme used to be framed by the Corporation, but now on account of the change in the Motor Vehicles Act, 1988 the draft scheme has to be formulated by the State Government and objections are heard by Deputy Secretary, who is not member of Board of Directors. Therefore, in the changed circumstances the argument of Mr. Vyas is now too far fetched.

28. In the result, we are of the opinion that there is no merit in this appeal and in all other appeals and the same are dismissed. No order as to costs.