

(1968) 09 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 419, 423, 498, 499 to 502, 517 to 529, 534, 535, 537 to 539, 549 to 552, 556 to 563, 570 to 574, 576 to 580 and 588 to 591 of 1968

Tej Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-09-1968

Acts Referred:

Constitution of India, 1950 — Article 166, 226
Motor Vehicles Act, 1939 — Section 68C, 68D, 68I
Rajasthan State Road Transport Services (Development) Rules, 1965 — Rule 6

Citation : AIR 1969 Raj 233 : (1968) WLN 19

Hon'ble Judges : Kan Singh, J;C.M. Lodha, J

Bench : Division Bench

Advocate : Narsaraju, M.A. Pasha, J.P. Jain, H.N. Kalla, J.G. Chhangani and B.L. Maheshwari, for the Appellant; N. De. Solicitor General Of India, G.C. Kasliwal, General, M.M. Vyas, A.A.G., R.N. Munshi, Additional Government Advocate and N.B. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh J.

1. We have before us a group of 51 writ petitions in which the several writ petitioners challenge the validity of a scheme of nationalisation relating to Raisinghnagar-Rawatsar route which runs via Padampur-Ganganagar-Hanumangarh Junction and Hanumangarh Town. The petitioners seek appropriate writ direction or order against the respondents. As the writ petitions raise identical questions of fact and law, they can conveniently be disposed of together. We may give the relevant facts with reference to Tej Ram's writ petition.

2. By a notification dated 9-12-65 the General Manager of the Rajasthan State Road Transport Corporation, Jaipur, hereinafter to be referred as the "Corporation," which is the State undertaking, published a notification u/s 68-C

of the Motor Vehicles Act, 1939, hereinafter to be referred as the "Act" read with Rules 3 and 4 of the Rajasthan State Road Transport Services (Development) Rules, 1965, hereinafter to be referred as the "Rules," inviting objections to be filed before the Secretary to the Government in the Transport Department within 30 days of the publication of the scheme in the Gazette In accordance with Rule 6 of the Rules. On 24-1-66 petitioner Tej Ram filed objections before the Secretary to the Government of Rajasthan in the Transport Department. A copy of the objections has been placed on record as Annexure-2 and we will have occasion to refer to it a little later. On 28-4-66 the Joint Legal Remembrancer to the Government, who was appointed under the Rules to hear the objections, issued a notification in the Gazette intimating all the objectors that the objections would be heard by him on 15-6-66 at 11-00 A. M. in his chamber in the Rajasthan Secretariat and the objectors would also be permitted to lead evidence oral or documentary during the aforesaid hearing. It was further mentioned in the notification that in case the objectors desired to lead evidence and produce witnesses they should indicate the type of evidence supported by affidavit, as to what evidence each witness was expected to give in respect of the scheme. Further the objectors were to intimate the names and addresses of such witnesses to the Joint Legal Remembrancer on or before the date of hearing. The objectors could appear in person or through a duly authorised agent and produce evidence oral and documentary on the aforesaid date.

On 15-6-66 when the objections came up for hearing before the Joint Legal Remembrancer, Shri L. L. Sharma, counsel for the objectors, moved an application (Annexure-4 on record) praying that the Rajasthan State Road Transport Corporation be directed to file a reply to the objections. After hearing the parties the Joint Legal Remembrancer ordered that the Corporation cannot be compelled to file any reply to the objections as the case was already posted for the objectors' evidence and in the circumstances it was not thought necessary to obtain any reply of the Corporation to these objections. The case was then posted for 7-7-66. On that date, however, the case was adjourned to 20-7-66. On 20-7-66 Shri L. L. Sharma, counsel for the objectors, moved another application questioning the jurisdiction of the Joint Legal Remembrancer to hear the objections. It was urged that in accordance with Section 68-D of the Act the State Government, that is the Governor, alone could hear the objections and this function could not be assigned to officers subordinate to him in exercise of his powers under Article 166 of the Constitution. It was further urged that the Joint Legal Remembrancer had not been authorised by the State Government under Rule 6 of the Rules to hear the objections.

On this application the Joint Legal Remembrancer ordered that as a similar Question had been raised in a writ petition pending before this Court, he would defer his decision on the application till the judgment of the High Court in the pending writ petition. Nothing material happened on some dates of hearing and eventually on 28-10-65 an application was moved by Shri L. L. Sharma (Annexure-7) praying that certain documents relating to building of passenger

sheds over certain routes be summoned from the General Manager of the Corporation. Similarly, a request for obtaining the time-table of services on other nationalised routes was requested to be summoned from the Secretary, Regional Transport Authority and also the record of breakdown of services over such routes during the years 1965 and 1966 was requested to be summoned. Furthermore, a representation made by one Shri Bhanwar-lal Kalabadal, M. L. A., complaining about the services of the Corporation was to be summoned from the Private Secretary to the Chief Minister. So far as oral evidence was concerned. Shri Bhanwarlal Kalabadal, M. L. A., was requested to be summoned. The documents were summoned by the Joint Legal Remembrancer vide his letters Annexure-8 and Annexure-10 and the Joint Legal Remembrancer also requested Shri Bhanwarlal Kalabadal, M. L. A., vide his letter Annexure-9 to appear before him to give evidence on 19-11-66 at 11-00 A. M. It may be mentioned that Shri Bhanwarlal Kalabadal did not appear and the Joint Legal Remembrancer felt that he could not issue any coercive process to enforce his attendance. On 27-1-67 the Joint Legal Remembrancer noted that no witness on the side of the objectors was present but he gave them the last chance for producing the evidence and fixed 4-3-67 for it. A long date was given as in between General Elections had come.

On 4-3-67 Shri Ladli Lal, Advocate was present on behalf of the objectors but no witness was present and Shri Ladli Lal prayed for an adjournment for the purpose of producing the evidence. This request was opposed by the counsel for the Corporation, but the Joint Legal Remembrancer granted one more adjournment in the interest of justice and fixed 1-4-67 for recording the evidence. On 1-4-67, neither the counsel for the objectors was present, nor was any witness produced on that date. In the circumstances the Joint Legal Remembrancer fixed the case for 15-4-67 for arguments. The case was taken up on 27-4-67, 10-5-67 and 17-6-67, but it was simply adjourned in the expectation of the High Court's judgment. On 17-6-67 the Joint Legal Remembrancer noted in the order-sheet that the High Court had announced the judgment and, therefore, the case would be taken up on 1-7-67. On 1-7-67 no one was present on behalf of the objectors. The counsel for the Corporation was however, present. On that date the Joint Legal Remembrancer noted that it would be desirable to have the inspection of the route as that would help him in appreciating the arguments. Then the Joint Legal Remembrancer could not go for site inspection for one reason or the other.

On 9-2-68 both the counsel for the Corporation and Shri L. L. Sharma, counsel for the objectors, were present and the Joint Legal Remembrancer fixed 18-3-68 for site inspection. The Joint Legal Remembrancer inspected the site on 18th and 19th March, 1968 and on 25-3-68 he drew up a note of site inspection and then fixed 10-4-68 for arguments. On 10-4-68 only the counsel for the Corporation was present and no one was present on behalf of the objectors. The Joint Legal Remembrancer heard the arguments of the counsel for the Corporation and fixed 1-5-68 for his decision. On 24-4-68 Shri L. L. Sharma moved an application

before the Joint Legal Remembrancer which is Annexure-16 on record, praying that an opportunity of further hearing be allowed to the objectors in the case. The Joint Legal Remembrancer, however, did not like to re-hear the matter and rejected the application. On 1-5-68 the Joint Legal Remembrancer announced the order which is Annexure-19 on record and thereby approved the scheme proposed for the route. The scheme was ordered to come into force from 1-7-68. The approved scheme was published in the Rajaslhaz Gazette of 3-5-68.

3. A number of grounds have been taken in the writ petition challenging the order of the Joint Legal Remembrancer approving the scheme, but it is not necessary to refer to the several grounds as Shri Narsa Raju who argued the case on behalf of the petitioners confined his submission only to three grounds which we propose to deal with in the course of our judgment. Shri Narsa Raju realised that the grounds other than those argued by him were either covered by previous decisions or were not such as he would like to urge.

4. The writ petitions have been opposed on behalf of the respondents and it is submitted that the scheme was validly approved and did not suffer from any flaw on the grounds urged by the petitioners.

5. The contentions raised by Shri Narsa Raju were as follows:--

(1) The appointment of Joint Legal Remembrancer as an authority for approving the scheme and hearing the objections in relation thereto was invalid and inoperative.

(2) The draft scheme was ultra vires as the Corporation did not apply its mind to the nationalisation of the route in question.

(3) The Joint Legal Remembrancer did not give sufficient opportunity of hearing to the objectors before approving the scheme and in doing so he did not comply with the statutory requirements. It was further urged that the decision of the Joint Legal Remembrancer was mala fide and consequently inoperative in law.

6. We propose to deal with the contentions in the order in which they are mentioned.

Re. 1. Shri Narsa Raju argued that the duty imposed on the State Government u/s 68-D of the Act was a quasi judicial function and for discharging that duty properly the State Government has to conform to the norms of judicial procedure. Therefore, it was necessary, according to him, that the authority who has to decide the question about the approval of the scheme should not be such as would be directly or indirectly interested in the result of the case. In this connection it was urged that though the Corporation was a distinct legal entity, technically different from the Government, yet virtually the Corporation was a Government body or a limb of the Government in that the Corporation was financed and controlled by the Government, its chairman was appointed by the State Government and out of the 5 official members three were the nominees of the State Government and further the Manager and the Chief Accounts Officer

were appointed by the Government. In these circumstances it was urged that a quasi judicial function of approving the scheme after hearing of objections could not have been delegated by the State Government to any officer subordinate to it as such officer being a servant of the Government would be suffering from bias. Shri Narsa Raju, however, submitted that such a function could be discharged by the Minister as, according to him, the Minister was not an authority or officer subordinate to the Government being the Government himself. Learned Solicitor General, on the other hand, contended that there was no question of delegation of any function to the Joint Legal Remembrancer as the rules made by the Governor themselves provide that this function has to be discharged by an officer appointed in accordance with the business rules of the State Government. Shri Narsa Raju read to us a number of passages from Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and Union of India (UOI) and Another Vs. P.K. Roy and Others,

7. It is well settled that hearing contemplated u/s 68-D was quasi judicial in nature and the State Government acted as a quasi judicial authority under that section. Further the concept of a quasi judicial act has been taken to imply that the act is not wholly judicial and it prescribes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive powers. Then as regards the mode of conduct of such business it has been held that the procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to the quasi judicial acts, provided those rules conform to the norms of judicial procedure. Let us therefore turn to the provisions of the rules.

8. Rule 6 of the Rules which provides for consideration and disposal of objections runs as under:--

"Rule 6. Consideration and disposal of objections. -

(1) The objections received 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 of India.

(2) The said officer shall fix the date, time and place of hearing of objections and issue a general notice in the Official Gazette asking the objections and the General Manager to appear before him in person or through a duly authorised agent and the publication of the notice in the Official Gazette shall be deemed to be the personal service on the parties.

(3) The notice under Sub-rule (2) shall be published at least 14 days before the date fixed for hearing.

(4) No objector shall be entitled to be heard by the State Government unless the objections are made in accordance with the provisions of these rules.

(5) After hearing objections of the parties as may appear, the officer shall give a

decision whether the scheme should be approved or modified as he may deem proper."

9. There is no manner of doubt that these Rules framed u/s 68-1 of the Act are statutory and the provisions of Rule 6 conform to the basic principles of natural justice in that a duty has been cast on the officer to hear the objections of the parties before giving a decision whether the scheme should be approved or modified as the officer may deem proper. It is noteworthy that the vires of Rule 6 of the Rules has not been questioned in any of the writ petitions. Therefore, we have to proceed on the footing that this is a valid rule. This rule provides that the rejections 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 160 of the Constitution of India. It has not been contested that the Joint Legal Remembrancer was not authorised by the business rules to hear these objections. In a later case of the Supreme Court *H. C. Narayanappa v. State of Mysore* AIR 1950 SC 1073 Shah J., who delivered the unanimous judgment of the Constitution Bench, observed as follows:--

"Section 68D 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 if 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."

The above passage clearly shows that the function u/s 68-D of the Act can be discharged both by the Minister and the officer of the Government who is invested with the power. It is further evident that vague allegations about bias are not sufficient and they have to be supported by reliable evidence which is wholly wanting in the present case. The Joint Legal Remembrancer who heard the objections was acting in his official capacity. The post of a Joint Legal Remembrancer is borne on the Rajasthan Higher Judicial Service and he is a District Judge. In these circumstances we are not at all impressed by the argument that this function could not have been entrusted to an officer of the State Government belonging to the Higher Judicial Service or that an officer would suffer from bias because he is a limb of the Government. In an earlier case of this Court in *Chandra Bhan v. State of Rajasthan* 1961 RLW 47 : AIR 1901 Raj 168 a similar argument was advanced regarding the appointment of the Legal Remembrancer for hearing objections against the schemes and for approving

them. The learned Judges in that case observed as follows:--

"Under the Rules the scheme is prepared by the General Manager representing the State Transport Undertaking; the memoranda of objections u/s 68D are to be addressed to the Secretary to the Government of Rajasthan in the Transport Department and they are to be considered by an officer authorised under the rules made by the Governor in pursuance of Clause (3) of Article 166 of the Constitution of India. The Gazette Notification shows that under the Rules of Business aforesaid, framed by the Governor, the Legal Remembrancer to the Government of Rajasthan has been authorised to perform that duty. The officer is to dispose of the objections on merits after giving an opportunity of being heard to the objectors or their duly authorised representatives and also the representatives of the Transport undertaking. The officer so authorised to hear and determine the objections under the statute is an Officer of high judicial standing and experience in the cadre of the Higher Judicial Service of the State and no one has suggested that he has any prejudice against any one of the parties or that the objectors will not have a fair and impartial consideration of their objections at his hands. In case the scheme relates to any inter-State route the section further provides that the scheme shall not be deemed to have been an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government. It is, therefore futile to contend, under these circumstances, that there can be any bias on the part of the person authorised to hear objections simply because of his official position."

In that case the validity of the rules was questioned and the observations were made in relation thereto, but in our view, they are quite apposite to the present situation. The Rules that were then considered were of 1960 when the Transport Services were run by a Department of the Government. 1965 Rules were made after the Corporation came to be created in 1964, but in material respects the rules are identical. The Joint Legal Remembrancer had to be appointed in place of the Legal Remembrancer because the Legal Remembrancer happened to be the chairman of the State Transport Authority. All the same the fact remains that like the Legal Remembrancer the Joint Legal Remembrancer belongs to the cadre of District Judges. We are, therefore, satisfied that the State Government could assign this function of hearing the objections and approving the scheme u/s 68-D of the Act to the Joint Legal Remembrancer and it cannot be said that the officer suffers from any bias as would disqualify him from hearing the objections or approving the scheme.

10. Re. 2. For this Shri Narsa Raju argues that in preparing the scheme the General Manager of the Corporation had not taken note of the fact that the Government had prepared a phased programme of nationalisation of road transport and in implementation of its policy a scheme had been prepared by the General Manager of the State Roadways on 27-8-64 and on 26-9-64 objections were filed against that scheme but the scheme remained in cold storage and the present scheme was prepared without reference to the previous schemes.

Learned counsel further submitted that no reason has been assigned as to why earlier scheme was abandoned and why the present scheme in deviation of the earlier scheme was adopted. It was, therefore, suggested that the present scheme was framed by the General Manager of the Corporation without applying his mind to the question of the necessity of framing such a scheme. The argument, in our opinion, is wholly devoid of force. The Government may have formulated a policy and the General Manager of the erstwhile State Roadways, which was a Department of the State, may have framed the scheme, but the fact that the scheme framed by the General Manager of the Corporation was different from the previous scheme shows that he formulated a scheme independently which he was legally entitled to do. He was not inhibited from formulating his own scheme by what the General Manager of the erstwhile State Roadways may have done or even by the General statements of policy made by the Government from time to time. On the contrary, the fact that the General Manager of the Corporation framed his own scheme irrespective of what was done previously shows that he was exercising his own judgment in the matter and was very much applying his mind to the proposed scheme that he was putting up.

A perusal of the notification dated 9-12-65 shows that the State Transport Undertaking was of the opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service it was necessary in the public interest that the road transport services on the routes mentioned in Clause (1) of the annexed scheme should be run and operated by State Transport Undertaking to the complete exclusion of other persons and it was in these circumstances that the scheme was formulated. The scheme contains the necessary particulars. In these circumstances there is no reason to think that the General Manager who framed the scheme did not apply his mind to it. The contention raised has, therefore, no substance.

11. Re. 3. Shri Narsa Raju argued that both Section 68-D of the Act and the Rules require that objectors should be heard and they should have an opportunity of urging that the scheme proposed was not in public interest as the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service would not thereby be achieved and further, the objectors could urge grounds personal to them for showing that their routes should not be taken over. This opportunity, the learned counsel maintains, was denied to the objectors. He contended that the Joint Legal Remembrancer did not give notice of the date of hearing on which he was to hear the arguments, that is, on 10-4-68 and therefore, according to learned counsel, the petitioners were denied the hearing as contemplated by law and this also resulted in violation of the principles of natural justice.

Apart from these, according to learned counsel, when the objectors applied before the Joint Legal Remembrancer on 20th April, 1968, for hearing the Joint Legal Remembrancer should not have rejected the application but should have

heard them. Learned counsel emphasised that the assertion for not giving of the notice of hearing for arguments was admitted by the respondents and the rule about hearing which included hearing of oral arguments as well had to be strictly complied with. In elaboration of the submission, learned counsel argued that the statutory provision relating to hearing being correlated with the fundamental right of the petitioners under Article 19 of the Constitution, the provision about hearing was absolute and admitted of no departure. Further there could be no consideration of any prejudice resulting to the petitioners and, at any rate, as to what and how prejudice would be caused could not be gauged at this stage. He placed reliance on *Malik Ram Vs. State of Rajasthan*, *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation* and *Another, Collector of Central Excise v. Sri Nagarmal*, Civil Appeals Nos. 1362 and 1363 of 1967 D/- 16-2-1968 (SC).

12. Learned Solicitor General, on the other hand, submitted that the Joint Legal Remembrancer had given sufficient opportunity to the objectors to substantiate their objections and the objectors did not produce any evidence in support of the objections, nor were they present to give their own statement in support of the objections and had otherwise not pursued the matter properly before the Joint Legal Remembrancer. He invited our attention to the order of the Joint Legal Remembrancer and stressed that what the Joint Legal Remembrancer has stated in his order has not been questioned in the writ petition. Learned Solicitor General further submitted that the objectors had to thank themselves if they did not avail of the opportunities afforded to them. He lastly submitted that some of the objections were wholly irrelevant for consideration of the scheme and some of the objections which were not irrelevant could be made good only by evidence which had not been produced by the objectors. In the circumstances, he submitted that the objectors had not been prejudiced in any manner, and this consideration, according to him, would be germane to exercise of our extraordinary jurisdiction in the matter of high prerogative writs like that of certiorari as was asked for. Learned Solicitor General placed reliance on *Capital Multi-purpose Co-operative Society Bhopal and Others Vs. The State of M.P. and Others*, and *Ramnath Verma Vs. State of Rajasthan*,

13. We have already reproduced Rule 6 of the Rules. We may now read the relevant portion of Section 68-D of the Act.-

"68-D. Objections to the Scheme.-- (1) Any person affected by the scheme published u/s 68-C may, within thirty days from the date of the publication of the scheme in the Official Gazette, file objections thereto 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."

14. We have already referred to Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, The hearing contemplated u/s 68-D or Rule 6 of the Rr. for that matter as observed above, was quasi judicial in nature and the concept of a quasi-judicial act implies that the act is not wholly judicial and it prescribes only duty cast on the executive body or authority to conform to norms of judicial procedure in performing its duty and further the mode of conduct of its business was to be in accordance with the procedural rules for the conduct of Government business.

15. The pointed question canvassed before us was that as the oral arguments of the objectors were not heard, there was no hearing by the Joint Legal Remembrancer as contemplated by the statutory provisions or as would be necessary according to the principles of natural justice. Having carefully considered the matter, we find ourselves unable to accept the argument stated so broadly that from the mere fact that oral arguments are not heard by a particular quasi-judicial body, the hearing before it would be vitiated.

We may refer to the leading case of Local Government Board v. Alridge. 1915 AC 120 decided by the House of Lords. Alridge was having a dwelling house in Hampstead. In January 1911 Hampstead Borough Council in exercise of its powers under the Housing, Town Planning etc. Act, 1909 made a closing order in respect of his house as being unfit for human habitation and subsequently, the Borough Council refused to determine this order on an application made by Alridge. Alridge filed an appeal before the Local Government Board. The Local Government Board appointed an inspector to hold a public local enquiry as contemplated by that Act. Alridge adduced evidence at that enquiry. The Inspector then submitted his report and on the basis of that report and on consideration of the facts and the evidence given at the enquiry, the Local Government Board dismissed the appeal of Alridge. Alridge then filed a writ petition. He inter alia contended that he was entitled to be heard orally by the Local Government Board before his appeal could be dismissed. The Divisional Court which heard the writ petition, dismissed it. Alridge then went up in appeal to the Court of Appeal. The Court of Appeal accepted the appeal by majority holding that Alridge was entitled to be heard. Local Government Board then went in appeal to the House of Lords. Lord Chancellor in his speech referred to the conflicting views in the Court of Appeal and he also referred to the history of the legislation. Under the earlier law, the appeal lay to the court of Quarter Sessions, but this provision was amended and the appeal thereafter lay before the Local Government Board. Noticing this change, his Lordship stated that the appeal was to be not as before to the Quarter Sessions but to the Local Government Board. This was, according to the Lord Chancellor, as a result of change in policy.

The Lord Chancellor further observed as follows:--

"My Lords, when the duty of deciding on appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of

adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles in which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal."

16. From this passage, it will be evident that though the duty has to be discharged judicially, the procedure has to depend on the nature of the tribunal and the procedure of every tribunal need not be the same. The Lord Chancellor further stated like this:

"In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the duty of enforcing obligations on the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable."

Then after considering the judgment of the Court of Appeal, his Lordship pointed out that it was fallacious to apply the test of the procedure of a Court of justice to a tribunal. The Lord Chancellor stated thus:

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary to be intended to be reached by its ordinary procedure, In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency"

What appears to me to have been the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of justice, instead of the other standard which was laid down for such cases in *Board of Education v. Rice* (1911) AC 179. I do not think the Board was bound to hear the respondent orally, provided it gave

him the opportunities he actually had."

17. The other Law Lords concurred in the opinion of the Lord Chancellor. We may, however, notice the observations made by Lord Moulton:

"In the present case, however, the Legislature has provided an appeal, but it is an appeal to an administrative department of State and not to a judicial body. It is said, truthfully, that on such an appeal the Local Government Board must act judicially, but this, in my opinion, only means that it must preserve a judicial temper and perform its duties conscientiously, with a proper feeling of responsibility, in view of the fact that its acts affect the property and rights of individuals. Parliament has wisely laid down certain rules to be observed in the performance of its functions in these matters, and those rules must be observed because they are imposed by statute, and for no other reason, and whether they give much or little opportunity for what I may call quasi-litigious procedure depends solely on what Parliament has thought right. These rules are beyond the criticism of the Courts, and it is not their business to add to or take away from them, or even discuss whether in the opinion of the individual members of the Court they are adequate or not."

18. What the House of Lords has laid down regarding the procedure to be followed by Administrative Tribunals accords by and large with what their Lordships of the Supreme Court have held in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, and in *State of Mysore Vs. S.S. Makapur*,

19. In the last mentioned case it was laid down that domestic tribunals are not courts and that they are therefore, not bound to follow the procedure prescribed for trial of actions in courts. Nor are they bound by rules of evidence. Further, unlike courts they can obtain information from all sources and that all that is expected is that they should give a fair opportunity to the party against whom such material is to be used, to explain it. It was added that what is fair opportunity will depend on facts and circumstances of each case. We have it from the authority of the House of Lords in the *Alridge's* case 1915 AC 120 that personal or oral hearing is not the sine qua non of the principles of natural justice. It is not out of place to mention that in Jail appeals,¹ a prisoner is not always heard by the Court by the ear and by the word of mouth and nobody had ever suggested that there is violation of principles of natural justice in this or that on that account there is no effective hearing of appeal.

20. Therefore, we are unable to accept the wide proposition that there would be no proper hearing before an administrative tribunal like the Joint Legal Remembrancer unless the oral arguments too of a party are invariably heard, though we may add that it is desirable that oral arguments should be heard as far as possible.

21. Before we proceed to examine the proceedings before the Joint Legal Remembrancer, we may summarise as to what has so far been authoritatively

settled regarding the nature of hearing under Section 68-D of the Act.

22. About the nature of the hearing in general we have already extracted what was said by their Lordships in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, and in *State of Mysore Vs. S.S. Makapur*, as also what was said by the House of Lords in the case of *Alridge*. In *Malik Ram Vs. State of Rajasthan*, their Lordships laid down that hearing before the quasi judicial authority did not merely mean an argument and that in proper cases, it can embrace the taking of evidence both oral and documentary. However, it was held that while taking evidence, it would be open to the authority to consider whether the evidence offered was relevant or not and it could reject such evidence as would be considered irrelevant. Further, the authority would have full power to control the proceedings and an objector would not be entitled to prolong them by producing irrelevant or unnecessary evidence. In *Nehru Motor Transport Co-operative Society Ltd. and Others Vs. The State of Rajasthan and Others*, it was pointed out that in the absence of statutory rules, it would not be open to the authority to compel the attendance of witnesses and it was fair if it took the evidence of witnesses whom the objectors produced before it. In *Capital Multi-purpose Co-operative Society Bhopal and Others Vs. The State of M.P. and Others*, *Wanchoo J.* (as he then was) clarified that the authority cannot compel attendance of witnesses and, therefore, at the most it could issue letters to witnesses merely requesting them to appear before it and it would be open to those persons to appear or not to appear before the authority. It was also held that even if the authority did not issue such letters, it could not be said on that account that there was no effective hearing.

23. Let us now briefly notice what actually happened in this case. We may first refer to what the Joint Legal Remembrancer has said in his order dated 1-5-68. He started by saying that on receiving the objections from the Transport Secretary, he issued a notification in the *Rajasthan Gazette* intimating all the objectors to present themselves personally or through authorised agents before him and to produce evidence oral or documentary on 25th April, 1966. He then stated that on 15-6-66 *Shri L. L. Sharma* filed 30 *Vakalat-namas* on behalf of the objectors and he put in an application to compel the Corporation to give a reply to the objections. This request was disallowed. Then *Shri Sharma* was directed to submit a list of all the witnesses whom he wanted to produce in support of his objections. *Shri Sharma* failed to produce such list on 7-7-66 and he was given further opportunity to produce the list by 20th July, 1966 the latest. *Shri Sharma* however failed to do that but put in another application challenging the jurisdiction of the Joint Legal Remembrancer. The Joint Legal Remembrancer postponed the consideration of this application till after the judgment of this Court in a case in which a similar question had been raised. Then what happened thereafter will be evident from the following passage in the order of the Joint Legal Remembrancer:--

"Thereafter, number of opportunities were afforded to the objectors and their Advocate *Sri L. L. Sharma* to produce evidence before me in support of their objections but neither the objectors turned up nor the Advocate *Sri Sharma*

appeared before me nor any witnesses turned up. Keeping the principles of natural justice in mind the objectors were given time and again opportunities to substantiate their objections but they did not avail of the opportunity and failed to produce any oral or documentary evidence. The documentary evidence summoned by the objectors from the General Manager, Rajasthan State Road Transport Corporation, was submitted by the Corporation before me. On some of the hearings Sri L. L. Sharma appeared before me and expressed his inability to produce evidence on the grounds that the objectors are not taking any interest in this case and inspite of his writing repeated letters to them they have not replied to him. On 4-3-67 it was considered by me to give one more and the vlast opportunity to the objectors to enable them to produce their evidence on 1-4-1967. On 1-4-1967 neither any objector turned up nor their counsel was present nor any evidence came forth before mo and therefore the matter was fixed for hearing arguments on 15th April, 1967."

24. Before coming to a final decision, however, the Joint Legal Remembrancer considered it necessary to inspect the route. On 9-2-1968 Shri N. D. Mathur, counsel for the Corporation and Shri L. L. Sharma for the objectors were present before the Joint Legal Remembrancer. He informed them that he would be inspecting the route starting from Ganganagar side on 18-3-1968. but neither the counsel for the objectors were present at the site nor was anyone else present on their behalf. On 25-3-1968 on his return to the head-quarters, the Joint Legal Remembrancer drew up an inspection note and fixed 10-4-68 for hearing of arguments, but no one was present on behalf of the objectors on that day and, therefore, he heard the arguments ex parte and then pronounced his order on 1-6-68. The Joint Legal Remembrancer noticed in his order that the objectors had utterly failed to substantiate their objections taken in their objections because they failed to adduce any evidence. But in spite of that the Joint Legal Remembrancer considered each objection in detail and then he rejected them and as a result of rejection of the objections, he approved the scheme holding that it would provide efficient, adequate economical and properly co-ordinated transport service in the public interest.

25. We have perused all the proceedings recorded by the Joint Legal Remembrancer from 15-6-1966 to 1-5-68. What is remarkable is that it does not appear that the proceedings had remained lying at any time without fixing of further dates of hearing though on many dates there were no proceedings worth the name. Sufficient opportunity had been given to the petitioners to produce their evidence which they failed to produce. On 28-10-66 the petitioners filed an application for summoning: (1) List of passenger sheds buildings on five nationalised routes, (2) Timetable of services on those five routes. (3) Record of breakdown of services. (4) Representations submitted by Shri Bhan-warlal Kala Badal M. L. A. I complaining about the services of the Rajasthan State Transport Corporation.

All the documents were summoned by the Joint Legal Remembrancer. It was also

prayed in that application that Shri Bhanwar-lal Kala Badal M. L. A. be summoned. The Joint Legal Remembrancer requested him by a letter to appear before him on 19-11-1969 saying that the journey expenses would be paid when he would appear. Shri Bhanwar-lal Kala Badal, however, did not choose to appear. On 4-3-1987 when none of the witnesses for the objectors were present, the Joint Legal Remembrancer gave the last opportunity to the objectors to produce their evidence and fixed 1-4-67 for the purpose. On 1-4-1967 no one was present on behalf of the objectors nor was any witness present. In these circumstances, the Joint Legal Remembrancer fixed 15-4-67 for hearing arguments.

However, on 15-4-1967 the Joint Legal Remembrancer adjourned the case to another date, that is 27-4-67 as the High Court Judgment had not been pronounced. He then further adjourned the dates and eventually on 17-6-67 the Joint Legal Remembrancer was told that the judgment had been pronounced by the High Court. He then fixed 1-7-1967 for arguments. On that occasion, neither the objectors nor their counsel were present. The Joint Legal Remembrancer then felt that before hearing arguments, he should see the site. For one reason or the other, the Joint Legal Remembrancer could not go for site inspection and on 9-2-68 he fixed 18-3-68 for site inspection. On 9-2-68, Shri L. L. Sharma was also present. After seeing the site, the Joint Legal Remembrancer drew up an inspection note on 25-3-68 and fixed 10-4-68 for hearing arguments. On 10-4-68 he heard the arguments. On 24-4-68 the objectors prayed for "an opportunity of further hearing to the objectors in the case." It was urged by them that they could not be present at the site inspection because on 19th and 20th March they had to appear before the Regional Transport Authority, Bikaner. They also made grievance of the fact about the dismissal of their application for not summoning the witnesses. What is noteworthy in this application is that it is not mentioned therein that the objectors had not come to know that on 10-4-68 arguments were to be heard. This application was dismissed by the Joint Legal Remembrancer and the Joint Legal Remembrancer noted as follows:

"Presented by Shri Laddilal Sharma. Because in this case many ex parte hearings had taken place and as the case had become old and further the objectors did not appear in spite of notice, time cannot be granted to them for arguments. Order pronounced." (Translation is ours).

26. As a result of the perusal of the various order-sheets, we are satisfied that what the Joint Legal Remembrancer has stated in his order is borne out from the record. We see no reason to distrust the observations of the Joint Legal Remembrancer that Shri L. L. Sharma who appeared before the Joint Legal Remembrancer on some of the hearings expressed his inability to produce evidence on the ground that the objectors were not taking any interest in the case and in spite of Shri Sharma's writing them repeated letters, they had not replied to him. The Joint Legal Remembrancer gave a last opportunity to them on 4-3-67 to enable them to produce their evidence on 1-4-1967 and they did not

avail of that opportunity.

27. Learned counsel for the petitioners submitted that though these facts might have disentitled the petitioners from adducing evidence, they could certainly be heard orally as they would still be able to satisfy the joint Legal Remembrancer that even on the basis of the material summoned by him, the scheme was not fit to be approved. There is no manner of doubt that on 1st of April, 1967 the petitioners had the last chance to produce their evidence which they did not avail. The petitioners or their counsel were not present on that day. Shri Narsa Raju had to concede that if on that day the Joint Legal Remembrancer were to hear the arguments and dispose of the objections, that would have been perfectly in order, as this is what even a civil court does when a party who has to adduce his evidence is absent on a date of hearing. If this is so, then we fail to see how the decision of the Joint Legal Remembrancer would be bad, if instead of hearing the arguments on that day, he fixed another date for arguments. We have to remember that the procedure before an administrative tribunal is not exactly like the procedure that a regularly constituted court has to follow. Once a party does not appear in a civil court, then the civil court is not bound to inform the absenting party, at a later date, of the subsequent adjourned hearings. It is for the party to find out the dates of hearing if he wants to join the proceedings at a later date. The Joint Legal Remembrancer fixed the case for site inspection in the presence of the parties and yet the objectors did not choose to appear at the site. The petitioners could have availed of the opportunity of showing the situation emerging from the condition of the route itself. Thereafter, if they did not join the Joint Legal Remembrancer at the site inspection, then it was for them to find out as to on what date the arguments were to be heard. A perusal of the proceedings shows as already observed, that on each date of hearing, even if there were no proceedings, the next date was given and the proceedings never remained without any future date being fixed. The objectors should have, therefore, tried to find out the date from the Joint Legal Remembrancer after the site inspection. The Joint Legal Remembrancer drew up the site inspection note only five days thereafter and had fixed a fairly long date, that is, almost after fifteen days of his recording the site inspection note. During this time, the objectors could have found out the date. One of the objectors has, of course, filed an affidavit that he contacted a clerk in the office of the Joint Legal Remembrancer but he was told from time to time that no date had been fixed. The affidavit is worthless. It does not mention as to on what date such an enquiry was made and who was the clerk from whom Such an enquiry about date was made. We have no reason to doubt what the Joint Legal Remembrancer has recorded on the file, namely that on 25-3-1968 he drew up the site inspection note and then fixed 10-4-68 for hearing arguments.

28. The plea of prejudice need not detain us. If we were to come to the conclusion that the petitioners had no hearing at all then the occasion for considering the plea of prejudice might arise. As we have observed above, the procedure of every tribunal need not be the same and in the words of the House

of Lords "that it is a fallacy to set up the test of the procedure of a court of justice for examining the proceedings of an administrative tribunal." Therefore, the Joint Legal Remembrancer could have disposed of the entire matter on 1-4-1967 and he cannot be said to have acted contrary to the principles of natural justice or the statute if he first fixed 15-4-68 for hearing arguments and then decided to have a site inspection. Parties had knowledge of the date of site inspection. Thus it was not necessary for the Joint Legal Remembrancer to have informed the petitioners of subsequent dates of hearing and it was for them to ascertain such dates and be present before him if they wanted to address him orally. In these circumstances we are satisfied that in form and in substance, the objectors had a hearing. Their objections were invited by a general notification. They were asked to be present on a certain date. Thereafter, they were given several opportunities to adduce their evidence. The Joint Legal Remembrancer issued a letter to the only witness they wanted to examine, but he did not turn up; further he summoned the documents that the objectors wanted to be summoned and then he had considered the objections on merits. In that situation, the mere fact that the Joint Legal Remembrancer did not have the benefit of an oral argument from the side of the objectors did not mean that there was no hearing of objections by the Joint Legal Remembrancer.

29. We do not find any substance in the contention of the learned counsel for the petitioner that even on the basis of the records, the petitioners could have shown that the scheme was fit to be rejected. We have already referred to the application moved by the petitioners. The documents that were summoned were wholly irrelevant for the consideration of the scheme. The first document was a list of passenger sheds on other routes. The second one was about the time table of service on the routes on which the information about the passenger sheds was desired and the third document was about record of breakdown of services over these routes. These documents had nothing to do "with the scheme under consideration.

30. We may now briefly refer to the objections of the petitioners which have been considered by the Joint Legal Remembrancer in his order. Copy of the objections has been brought on the record as Annexure 2. Paragraphs 4, 7, 8, 9 and 15 of the objections relate to the scheme generally. It is stated thereunder that the scheme did not contain the necessary particulars regarding it being economical and properly co-ordinated scheme and also for its being efficient and adequate. It is also averred that the transport services by the objectors were quite economical, adequate, efficient and properly co-ordinated; that no amenities and conveniences have been provided by the Corporation and the promises for them were empty; that the running of buses by the State Transport Corporation was not efficient and the services proposed were not adequate. The Joint Legal Remembrancer has considered the objections. Apart from this, it is altogether irrelevant to make a comparison between the existing services and the proposed scheme of nationalisation. Then some of these objections could have been substantiated only by evidence which the objectors had failed to

adduce. Then there are objections contained in paragraphs 17, 18 and 19. These are of a personal nature. It is thereunder stated that as a result of nationalisation, the buses of the petitioners would be rendered useless and about 500 families would be deprived of their regular means of earning and these were hard times. These objections have nothing to do with the soundness of the scheme and apart from it, there was no evidence to substantiate these objections.

31. Then the petitioners had challenged by these objections the vires of Chap. IVA of the Act and it was alleged that fundamental rights of the petitioners under Articles 14, 19(1)(g), 31 and 301 of the Constitution were contravened. The vires of Section 68C was also challenged in particular. These were all legal objections and were concluded by previous decisions of the Supreme Court. Learned counsel for the petitioners too did not like to advert to these objections. We are, therefore, satisfied that the Joint Legal Remembrancer had given his¹ careful consideration to these objections and there was thus no lack of hearing. It was observed in Capital Multi-purpose Co-operative Society Bhopal and Others Vs. The State of M.P. and Others, that there¹ was no question of consideration of comparative merits of the State Transport undertaking and the private operators in the context of Chapter IVA. In that case it was observed that it was not necessary for the authority hearing the objections to ask for the past records of the Corporation for the purpose of such a comparison of the performance of the Corporation with private operators. It was laid down that unless the scheme is shown not to be efficient, adequate, economical and properly co-ordinated, it will generally follow that it is in the public interest. It was added that the comparative merits of the Corporation as against individual operators do not require to be judged under Chapter IVA of the Act.

32. We also do not find any substance in the plea regarding lack of co-ordination with the stage coaches running beyond the borders of Rajasthan in the territories of other States. It is for the Regional Transport Authority to fix the timings for plying of buses and while doing so, it can adjust the timings accordingly. The scheme does not make provision for timings, but it only mentions the number of services to be provided over the route. A scheme is not bad for want of provision for timings. We may refer to C.P.C. Motor Service, Mysore Vs. The State of Mysore and Another, in that connection.

33. Lastly, about the plea of mala fides and bias on the part of the Joint Legal Remembrancer, it is sufficient to say that as already observed by us, existence of so called official bias is not enough and no personal bias on the part of Shri Durga Shankar Acharya, the Joint Legal Remembrancer, now Legal Remembrancer cum Law Secretary was shown. The plea of mala fides was altogether groundless. In the circumstances, we do not find any force in the third contention of the learned counsel either,

34. The result is that we hereby dismiss all the writ petitions, but, in the circumstances of the case, leave the parties to bear their own costs.