

(1986) 12 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1638, 1640 and 1641 of 1986

Yadu Raj Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-12-1986

Acts Referred:

Evidence Act, 1872 — Section 114

Industrial Disputes Act, 1947 — Section 10A, 17

Road Transport Corporations Act, 1950 — Section 3

Citation : (1987) 1 WLN 304

Hon'ble Judges : Panna Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Panna Chand Jain, J.—These writ petitions involve common questions of law and almost identical facts and, as such, are being disposed of by this common order.

2. For deciding these three writ petitions I shall take into consideration the facts of S.B. Civil Writ Petition No. 1638, Yadu Raj Singh v. The State Raj. and Ors. The controversy lies in a narrow compass and may be stated thus: The petitioner is a holder of one non-temporary stage carriage permit on Bharatpur-Dholpur via Sapau route bearing No. RTA/85/5183 valid upto 11th March, 1990, in respect of Vehicle No. RSD 2551. The petitioner, Beni Singh, in S.B. Civil Writ Petition No. 1640/1986, is a holder of one non-temporary stage carriage permit on Bharatpur-Basedi via Ghana, Malah. Sear, Uchhain, Kheriamod, Rundhawal, Bandbaretha route in respect of Vehicle No. RSD 3729, and the permit of the petitioner in that case is valid upto 20th March, 1987. Petitioner Daudayal in S.B. Civil Writ Petition No. 1641/1986 is also holding one non-temporary stage carriage permit No. RTA/85/5156 for the route Bharatpur-Dholpur via Jagner valid upto 3rd February, 1988, in respect of Vehicle No. RST 8765.

3. The Motor Vehicles Act, 1939 has been amended by Act No. 100 of 1956, by which Chapter IV-A has been added. Thereafter by an Act No. 56 of 1969 certain

amendments have been made in the Act. Section 68C provides for the preparation and publication of scheme of Road Transport Services of a State Transport undertaking, which runs as under:

68C. Preparation and publication of scheme of road transport service of a State Transport Undertaking: Where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate economical and properly coordinated road transport service, it is necessary in the public interest that 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 Transport Undertaking may prepare a scheme giving particulars of the nature of the service if proposed to be rendered, the area or route proposed to be covered and such other particulars respecting there to as may be prescribed, and shall cause every such scheme to be published in the official gazette and also in such other manner as the State Government may direct.

4. Section 68-D, which is reproduced below, deals with draft scheme. It provides that draft scheme is required to be published in the official gazette and atleast in one newspaper in regional language circulating in the area or route which is proposed to be covered by the scheme. Objections u/s 68D may be filed by any person likely to be affected by the scheme. Such a person is required to file objection within 30 days from the date of publication of the scheme in the official gazette. Objections are required to be filed before the State Government:

68-D. Objection to the scheme-(1) on the publication of any scheme in the official gazette and not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme:

- (i) any person already providing transport facilities by any means along or near the area or route proposed to be covered by the scheme;
- (ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government; and
- (iii) any local authority or police authority within whose jurisdiction any part of the area or route proposed to be covered by the scheme lies; may within thirty days from the date of its publication in the official gazette, file objection to it before the State Government.

5. On 4th December, 1950, the Road Transport Corporation Act, 1950 came into force. The State Government by virtue of power conferred u/s 68-1 published the Rajasthan State Road Transport Services (Development) Rules, 1965 and established Rajasthan State Road Transport Corporation u/s 3 of the Road Transport Corporation Act, 1950. Rule 3 required the preparation of Scheme u/s 68C by the General Manager of the State Transport Undertaking. Rule 4 prescribes the particulars of the scheme and Rule 5 provides procedure regarding

objections to be raised against the Scheme.

6. A scheme u/s 68C prepared by the Corporation is said to have been published in the Rajasthan Rajpatra bearing date 25th July, 1986.

The petitioner could not file any objection to the scheme within 30 days of the alleged date of its publication in the official gazette, i.e., 25th July, 1986. The case of the petitioner is that the gazette is antedated and was not, in fact, published on the date on which it purports to have been published, i.e., on 25th July, 1986 and, as such, he was precluded from filing his objections against the scheme and, thus, he lost his valuable right to file objections provided in Section 68D of the Motor Vehicles Act and Rules 5 of the Rajasthan State Road Transport Services (Development) Rules, 1965. The submission of the petitioner is that the gazette notification, publishing scheme u/s 68-C bears antedate 25th July, 1986, is neither in consonance with the provisions of the Act nor the procedure prescribed in the aforesaid rules. It is the case of the petitioner that in the proceedings before the State Transport Appellate Tribunal, the Corporation submitted an application on 8th August 1986, in which it admitted that the said scheme has not been published. A certified copy of the said application has been filed as Annx. P/t. The relevant portion of Annx. P/1 is as follows:

2. That subsequent to the hearing of final arguments in the above noted appeal a scheme u/s 68 C of the M.V. Act has been published in the official gazette dt. 25-7-86. However, the gazette has not been despatched from the press as yet.

Respondent No. 3 the Rajasthan State Road Transport Corpn. has filed a reply to the writ petition. In the reply, respondent No. 3 submitted that the Corporation, u/s 68-C, got the draft scheme published in the Rajasthan Patrika dated 29th April, 1986, by Notification dated 15th April, 1986. The Corporation also stated that it had sent the Notification dated 15th April, 1986 to the Secretary to the Government, Transport Department, Government of Rajasthan, Jaipur for its publication in the Official Gazette, and a copy of the same was sent to the Director, Printing and Stationery Department/Superintendent, Government Central Press, Jaipur for publication of the scheme in extra-ordinary issue of the Rajasthan Rajpatra. In order to support its contention, the Corporation filed the letter dated 15th April, 1986. In the reply to the writ petition, it was further pleaded that the State Government, vide its letter dated 22nd July, 1986, directed the Superintendent, Government Central Press, Jaipur to publish the draft scheme in the extraordinary issue of the Rajasthan Rajpatra, dated 25th July, 1986. It was, thus, submitted by the Corporation that in the circumstances narrated above the Superintendent, Government Central Press, Jaipur got the Notification of the draft scheme published in the extra-ordinary issue of Rajasthan Rajpatra, dated 25th July, 1986. A copy of the letter dated 22nd July, 1986, was also placed on record and the same was marked as Annx. P/3. In the reply filed by the respondents, it was also contended that the recital made in the application referred to above that, the said Gazette dated 25th July, 1986, has not been despatched from the Government Press by 8th August, 1986, is not

correct, as it is contrary to the record of the Government Press itself. However, it was admitted by the Corporation that from the record of the Government Press, it is evident that the gazette was issued on 7th August, 1986 to various offices of the State Government. It was also submitted by the Corporation that it is not believable that the petitioner did not come to know about the publication of the draft scheme within a period of 30 days from 25th July, 1986 so as to enable him to file objections against the said scheme. It was, thus, submitted that the petitioner is not entitled to raise any objection to the scheme and the petitioner is not entitled to any relief what so ever sought in the writ petition.

7. The case was taken up by Hon''ble SC. Agrawal, J. on 20th September, 1986. On that day, the learned Dy. Government Advocate prayed for time to file an affidavit indicating the date of publication and despot of the gazette notification, Annx. 2 with regard to publication of scheme u/s 68-C of the Motor Vehicles Act, 1939. An affidavit was field on 3rd October, 1986, by T.S Kakkar, Superintendent, Government Centre Press, Jaipur. In para 3 of the said affidavit, Shri Kakkar made the following statement:

That the date of despatch of the aforesaid gazette notification was 7-8-1986 where as the gazette was out on 6-8-1986.

8. The learned Counsel for the petitioner submitted that in view of the affidavit of Shri T.S. Kakkar, it is clear that the draft scheme was published in the Rajasthan Rajpatra of 6th August, 1986. It was despatched on 7th August, 1986. The learned Counsel S/Shri Sharma and Mehta have contended that from the deposition made by Shri Kakkar in his affidavit in pursuance to the order dated 20th September, 1986, it is clearly established on the admission made by the Superintendent, Government Central Press, Jaipur that the gazette notification was not published in the official gazette on 25th July, 1986, but the gazette was antedated and, in fact, the gazette was published on 6th August, 1986 and it was despatched on 7th August, 1986. The question raised in this writ petition is that in case a gazette notification is required to be published in the official gazette on a particular date and, if the same is not published on that specific date, but is published subsequently, though antedated, whether such a notification is a valid notification in the eye of law. The submission of Shri Mehta and Shri Sharma is that the requirement of Section 68C and 68-D is mandatory and a scheme is required to be published in the official gazette and objections are required to be filed within 30 days of its publication in the official gazette. In support of their contention, learned Counsel for the petitioners placed reliance on an unreported judgment of this Court in the case of *Mis Royal Mill Bus Service v. The State of Rajasthan and Ors.* D.B. Special Appeal No. 47 of 1986, decided on 4th July, 1986. Reliance has also been placed on *Bhag Chand v. RTA* an unreported judgment dated 4th Feb., 1983 This judgment of the learned Single Judge has also been confirmed by Division Bench of this Court in *D.B.Civil Special Appeal No. 78/83, Bhag Chand v. RTA, Bikaner and Ors.* decided on 16th May, 1983.

9. Shri R.N. Munshi, learned Counsel for the Corporation, submitted that the date

of publication of the Gazette is 25th July, 1986 and, as such, the affidavit given by Shri Kakkar is of no specific significance, as he has given the date of despatch of the Gazette as 7th August, 1986. He submitted that publication includes printing and issuance of the Gazette from the press. As the notification was published, regarding the draft scheme, in the gazette dated 25th July, 1986, there is a presumption that the scheme was published in the Rajasthan Rajpatra, which is dated 25th July, 1986.

10. I have given my thoughtful consideration to the respective submissions made by the learned Counsel for the parties.

11. Section 25 of the Rajasthan General Clauses Act, 1955 raises a presumption in favour of the publication of orders, schemes, notifications etc. that the same shall be deemed to be duly made, if they are published in the Rajasthan Rajpatra. Section 25 of the said Act is reproduced below:

25. Publication of orders, etc. in the Rajasthan Gazette to be deemed to be due publication--Where, in any Rajasthan law or in any rule, regulation or bye-laws made thereunder, it is directed that any rule, regulation, bye-law, notification, order, scheme, form or other matter shall be notified or published, then such notification or publication shall, unless such law, rule, regulation or bye-law otherwise provides, be deemed to be duly made if it is published in the Rajasthan Gazette.

12. Section 3 of the Rajasthan Gazette (Rajpatra) Act, 1956 provides for the issuance and publication of the Gazette under the authority of the State Government. Section 32(41) of the Rajasthan General Clauses Act, 1955 lays down the definition of "law" that law shall mean any law, Act, Ordinance, regulation, rule, notification, order, bye-law, scheme, or other instrument having for the time being the force of law. The Rajasthan General Clauses Act, 1955 provides for the interpretation of Rajasthan laws. The Motor Vehicles Act, 1939 is a central legislation and, therefore, it will be governed by the General Clauses Act, 1897, which does not provide any provision for raising a presumption in respect of publication of the orders, notifications etc. published in the official gazette. It may also be mentioned here that in exercise of the powers conferred by Section 68-1 of the Motor Vehicles Act, 1939, the State Government has prescribed the rules, called as Rajasthan State Road Transport Service (Development) Rules, 1965. Rule 3 of the said Rules provides for preparation of scheme and Rule 4 provides that the scheme is to be published in the official gazette as required by Section 68C and Section 68D, as the case may be, with such particulars as are laid down there in. There is a presumption u/s 114(e) of the Evidence Act that an act done by the public officer in his public capacity is properly done. It is also true that the Court presumes in the absence of proof to the contrary that the official acts are regularly performed. It is also true that such presumptions are rebuttable. In view of the presumption to be raised u/s 114(e) of the Evidence Act or in view of the presumption provided u/s 25 of the Rajasthan General Clauses Act, it may be presumed that the gazette notification

in the gazette of certain date was, in fact, so published. It is, thus, clear that it may be presumed that a scheme u/s 68C prepared by the Corporation was published in the Rajasthan Rajpatra, bearing date 25th July, 1986. But, in the facts and circumstances of the case, this presumption stands totally rebutted as the Rajasthan Rajpatra was antedated. There is an affidavit of Shri T.S. Kakkar, who is Superintendent of the Government Central Press, Jaipur mentioning there in that the date of despatch of the aforesaid gazette notification was 7th August, 1986, where as the gazette was out on 6th August, 1986. The question, thus, requires to be considered is, whether a gazette notification, if found to be antedated, could be ignored as such being contrary to the provisions for publication, or it should be deemed to be taken to be effective from the date, the gazette is despatched for information of the general public. In the famous case of *Harla Vs. The State of Rajasthan*, , their Lordships of the Supreme Court laid down as follows:

In the absence of any special law or custom, we are of opinion that it would be against the principle of natural justice to permit the subjects of a State to be published or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognizable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised person. It shocks his conscience. In the absence, therefore, of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.

13. In *Fatma Haji Ali Mohammad Haji and Others Vs. The State of Bombay*, , the Supreme Court stated the law regarding publication that where power is as to be exercised in clear and unambiguous terms as it affects civil rights of the person concerned and the decision that the power has been exercised should be notified in the usual manner in which such decisions are made known to the public.

14. In *Johnson v. Sargent & Sons* 1918 (1) KB 101 , the question arose whether when the beans were paid for the vendors had the power to dispose of them or whether they were precluded from doing so by virtue of the order of the Food controller. The order issued under the Defence of the Realm Regulations was dated May 16 1917. The goods were paid for by the three people concerned within banking hours, on May 16, 1917, but it was not known to the parties to the action or to the public generally till May 17, 1917, as it became known to the

persons concerned in the trade on May 17, 1917. It was argued that being dated May 16, it took effect from the earliest moment of that day by analogy to the rule with regard to the construction of statutes. The rule is that a statute takes effect from the earliest moment of the day on which it is passed or on which it is declared to come into operation. In that case, it was observed that about statutes there is publicity even before they come into operation, but this type of publicity is absent in the case of many orders. It was also observed that if the orders are to be effective at all, it is essential they should not be known until they are actually published, and it was held that the order came into operation when it was known on May 17, 1917. This authority of the King's Bench has been followed in *Harla v. The State of Rajasthan* (Supra). Hon''ble Supreme Court agreed to the proposition of law laid down in *Johnson v. Sargent* and made it very clear that there must be reasonable publication of some sort before an order becomes effective. Hon''ble Supreme Court in the case of *Harla v. The State of Rajasthan* held that in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative. In *State of Maharashtra Vs. Hans George*, , the Hon''ble Supreme Court again considered the case, of *Johnson v. Sargent and Sons* (Supra) after referring the comments of Prof. C.K. Allen, the Apex Court found force in the comments made by Prof. C.K. Allen on the reasoning given in *Johnson v. Sargent* (Supra). The Hon''ble Supreme Court made the following observations in this regard:

Taking the present case, the question would immediately arise is it to be made known in India or throughout the world, for the argument on behalf of, the respondent was that when the respondent left Geneva on November 27 he was not aware of the change in the content of the exemption granted by the Reserve Bank. In a sense the knowledge of the existence or content of a law by an individual would not always be relevant, save on the question of the sentence to be imposed for its violation. It is obvious that for an Indian law to operate and be effective in the territory where it operates viz, the territory of India, it is not necessary that it should either be published or be made known outside the country. Even if, therefore, the view enunciated by Bailhache, J. is taken to be correct, it would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of every one who intends to pass through India. It was "published" and made known in India by publication in the Gazette on the 24th November and the ignorance of it by the respondent who is a foreigner is, in our opinion wholly irrelevant.

15. It may be observed that in the case of *State of Maharashtra v. M.H. George* (supra), *Harla v. The State of Rajasthan* (supra), referred to above, was not considered at all. Even in that case, the Hon''ble Supreme Court did not disagree with the principles laid down in *Bailhache, J.* as would be evident from the passage quoted above. It may further be noticed that in the case of *State of Maharashtra v. M.H. George* (supra), the Hon''ble Supreme Court made weighty

observations regarding publication which are as follows:

Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with these requirements might result in their being no effective order the contravention of which could be the subject of prosecution but then there is no statutory requirement as conceived the rule to be that it is necessary that it should be published in the usual form i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules, in most of the India statutes, including the Act are under consideration, there is provision for the rules made being published in the Official Gazette. It therefore stands to reason that publication in the Official Gazette viz., the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned.

16. From the passage quoted above, the results follow: (a) publication in the Official Gazette is an ordinary method of bringing a rule of subordinate legislation to the notice of the persons concerned; and (b) where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court hold to be mandatory, a failure to comply with these requirement might result in there being no effective order the contravention of which could be the subject matter of prosecution.

17. In *K. Narayana Reddy v. State of Andhra Pradesh* (1960) 1 An. WR 77, Chinnappa Reddy J., as he then was, observed as follows:

The idea that a person may be governed by a law that cannot be known by him because it is not published or promulgated is revolting to judicial conscience and civilized thought. It has with it a strong order of totaliteriation and of the gestapo. It is repugnant to the principles of justice, freedom equality and fraternity, cherished by all lovers of democracy and enshrined in our Constitution.

"Subordinate legislation to take effect must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will take effect from the date of such publication or promulgation. Where the parent statute prescribed the mode of the publication or promulgation, that mode must be followed, but where the statute is silent, the question arises what is the mode of publication or promulgation to be adopted. The subordinate legislation itself may prescribe the manner of publication, in which case such mode, if adopted may be sufficient if I am guardedly adding the words if reasonable because it is not easy to visualise cases where the mode of publication prescribed by subordinate legislation may be wholly unsuitable. If affixture on the notice board of the central secretariat of rules their enactments or universal application in the country is prescribed as the mode of publication it can never be said to be satisfactory or reasonable mode of publication If the subordinate legislation does not prescribe a mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it

will take effect only when it is published, through the channel customarily recognised in our country as the appropriate channel through which official orders are made known to the public, namely, the official Gazette. In my view, subordinate legislation of a general nature takes effect on the date when it is published in the Official Gazette, except where statute provides otherwise or where the subordinate legislation itself provides a different but reasonable mode of publication.

18. In *G. Narayana Reddy v. State of Andhra Pradesh* (1978) 56 STC 310 ap, the facts as discovered by the High Court were that a notification was printed and released to the public on 12th December, 1966, though, in fact, the Gazette in which it was published bore the date 1st December, 1966. The High Court restrained the authorities from giving effect to the notification between the period from 1st December, 1966 to 11th December, 1966.

19. In *The Yemmiganur Spinning Mills Limited and Another Vs. State of Andhra Pradesh and Others*, it was observed by a Division Bench of the Andhra Pradesh High Court that, "Now, for an effective administration of law it is essential to observe the rule that ignorance of law is no excuse. But before the knowledge of law is attributed to every member of the public, the law must be published or promulgated for general information.

20. In *State of M.P. v. Raghubir Prasad* AIR 1979 SC 628, the Hon^{ble} Supreme Court while considering the meaning of word "publish" observed as follows:

To publish a news item is to make known to people in general "an advising of the public or making known of something to the public or purpose--Black's Legal Dictionary p. 1386). In our view, the purposes of Section 3 enimates the meaning of the expression "Publish". Publication is the act of publishing anything offering it to public notice of rendering it accessible to public scrutiny...an advising of the public or making known of something to them for a purpose...

21. A careful study of the cases referred to above would indicate that for proper publication of an order it is essential that the subject be made known to the public, and the ordinary manner of publication of notification and statutory orders is the publication in the Official Gazette. It may also be stated that neither the date of publication nor the date of printing, nor the date of the gazette in which the notification is published counts for publication The relevant date is when the public concerned gets the information about it, or the concerned gazette is made available to the public. It is the date of the release of the publication which becomes decisive dale to make the publication of an order or notification to be effective. Simply printing the notification in the official gazette and stocking them without releasing to the public would not amount to notification at all and/or publication of it. A perusal of the aforesaid rules would indicate that after the scheme is published in the official gazette it creates certain obligations upon the transporter The breach of the rule is also punishable. In the instant case, the Government directed the Government Press to publish the

notification in the Gazette of 25th July, 1986 But, it appears that the gazette was not printed on 25 July, 1986 and it was printed subsequently and, it was issued for sale on 7th August, 1986 Section 68D of the Motor Vehicles Act, 1939 and the Rajasthan State Road Transport Service (Development) Rules, 1965, make it obligatory to publish the scheme in the official gazette. Thus, it was obligatory for the Government Press to publish the scheme as per the directions given by the State in the Gazette to be printed and published on 25th July, 1986. The publication in the official gazette means publication of the scheme or notification in the gazette of a particular date and that gazette should be made available of that date which it bears. If we take the effective date to be the date on which the gazette is made available to the public, then we allow the authorities of the Press to print the Gazette on any date. Thus, the very purpose of the notification or scheme to be published in the official gazette will become redundant and the public and the Government will have to depend upon the sweet-will of the authorities of the press. Even if the Government desires to get a notification to be published in the official gazette on a particular date, it would be within the discretion of the press authorities to publish the notification on any date and antedating the gazette. In my opinion, such a procedure is not warranted. When a notification or scheme is required to be published, it must be published on the date desired by the Government. The Gazette should be published on the same day and be made available for sale to the public. The principle of law is that when a thing is required to be done in a particular manner, then the other mode is forbidden. In the cases where the publication is mandatory, it cannot be left to the sweet will of the authorities of the Government Press to print the gazette on any date and issue the same on any date. Such power of publication is not permissible in view of the mandatory provisions of Section 68-C and the rules made thereunder for publication of the scheme. In my opinion the provisions for publication of the draft scheme u/s 68-C and the rules made there under are mandatory. In an unreported decision of this Court in Bhag Chand v. RTA, S.B. Civil Writ Petition No. 454 1983, decided on 4th February 1983, Hon"ble Mehta, J. in the similar set of circumstances observed as follows:

It is a known fact that the Government Press is not working as they are expected to work. They should only print the date of publication which is the date of the issuance of the gazette and there should not be any inconsistency at all in the matter of date of the publication and the date of the issuance of the gazette. It is further surprising to note that their submission is that the publications are despatched leisurely thereafter. A valuable right of the parties cannot taken away in this way. Even if the gazettes are printed and kept in almirah for exhibition for months together, it cannot be said that the gazette has been published.

In the above case, the learned Single Judge quashed the notification as it was held that the notification issued was not a notification in accordance with law. An appeal was preferred against the said judgment In D.B. Special Appeal No. 73/1983, Bhag Chand v. RTA the learned Division Bench by its order dated 16th May, 1983, observed that there was no infirmity in the order under appeal and

that the learned Single Judge has not committed any illegality in making the order under appeal. It may be stated that no appeal was filed by the State against the said decision of the learned Single Judge, but an appeal was preferred by the petitioner himself and in that appeal the aforesaid observations were made, it is surprising that Shri Munshi, learned Counsel for the Corporation in Bhag Chand's case raised the objection that the date of the issuance of the gazette and the date of the publication of the gazette must be the same; but while making submission in the instant case on behalf of the Corporation he has taken a somersault. Learned Counsel for the parties placed reliance on Ashok Bus Transport Corporation v. Appellate Tribunal RLW 1980 63 and unreported D.B. judgment in Royal Mail Bus Service v. State, decided in D.B. Appeal No. 47/1986, on 4th July, 1986. It would be suffice to say that these authorities are with regard to the interpretation of Section 57(3) of the Motor Vehicles Act, 1939, which populates that full period of 30 days should be allowed from the date of publication of the application in the gazette for grant of permit for the purpose of submitting objections. In Royal Mail Service's case it was found that the gazette dated 7-4-1980, was not actually published on April 7, 1983, but was published and circulated on a letter dated viz. 16th April, 1983, & this period of 30 days was counted from 16th April, 1983 & it was held that this period 30 days would go beyond 12/13th May, 1983, the date fixed for consideration of the application of the Corporation and further held that there was the breach of the mandatory provisions of Section 57(3) of the Act. Thus, the rulings referred to above are distinguishable and are of no assistance for deciding the case in hand.

22. It is true that some times the publication in the official gazette may be directory, as had been held by the Supreme Court in Remington v. The Workmen AIR 1968 SC 214 that the provisions contained in Section 17(1). Industrial Disputes Act, 1947, regarding publication of award within 30 days is directory and if the publication is beyond the fixed time, the award is not invalid. A Division Bench of the M.P. High Court in Modern Store v. Krishi Mandi, AIR 1970 MP 16 held that the requirements of Section 10A(3) are partly mandatory and partly directory. On a true construction of the section, it was observed that the first condition as regards the publication of the agreement in the official gazette is obligatory, the other requirement, namely, of its notification within one month from its receipt is only directory and not imperative. Same view was also held in Aftab-a-Jaidid v. Bhopat Sharmjivi Patkar 1985 Lab IC 164.

23. The other aspect of the matter is where the publication in the official gazette is mandatory (which result would follow by reading Sections 68C, 68D, 68F(1A) and the Rules framed u/s 68-1 of the Motor Vehicles Act, 1939), but it is not published in the manner provided for it, whether such a publication is valid or not. Publication means printing and distributing a book, newspaper, article etc. for sale to the public. Section 68C of the Motor Vehicles Act says, "every such scheme to be published in the Official gazette". Rule 4 of the Rajasthan State Road Transport Service (Development) Rules, 1965 prescribes the scheme to be published in the official gazette containing certain particulars specified therein.

Objections, if any, are required to be filed by affected persons u/s 68D and Rule 5 of the said Rules within 30 days of the publication of the scheme in the official gazette. Publication in India is an ordinary method of bringing a rule or subordinate legislation to the notice of the person concerned. Where there is statutory requirement as to the mode of publication, a failure to comply with those requirements might result in there being no effective order as per the proposition of law laid down, in *State v. M.H. George* AIR 1955 SC 722 . For publication in the gazette, it may be presumed u/s 114(e) of the Evidence Act that it must have been printed and made available for sale on the date it bears. The aforesaid statutory requirements also bear testimony to the fact that the expression, "within 30 days from the date of its publication in the Official Gazette" occurring in Section 68D(iii) of the Motor Vehicles Act, makes it clear that the date of publication means the date which a gazette bears. The words, "publication in the official gazette" are not synonymous to words put up for sale to public, for sale to public is a subsequent step which cannot be imported into the Act and the Rules in *Asia Tobacco Company Ltd. Vs. Union of India and Others*, , the Madras High Court observed that, "it would be a mockery of the rule to state that it would suffice the purpose of the notification if the notification is merely printed in the official gazette, without making the same available for circulation to the public or putting it on sale to public." I am of the opinion that the date of the issuance of the gazette and the date of the gazette must be the same. There is presumption of correctness in the official acts. Thus, printing a gazette and antedating it amounts to misrepresentation and this practice of publishing should not be allowed to continue while dealing with the matters involving civil consequences or where publication affects Vested rights of the citizens. In the circumstances, when there is a presumption or due publication where publication of the gazette is governed by statutory law and where publication is a statutory requirement and mandatory, it would amount to giving a premium for remissness, if the date of publication is taken to be the date of its issuance for sale or distribution, as such a course is positively fraught with danger and carry with it an air of totalitarianism and of the gas lap. The administrative authority should act in a manner consistent with a broader concept of justice, if a feeling is to be nurtured in the minds of the citizens that the Government is by and for the people.

24. Consequently, I am of the opinion that the publication of the scheme in the gazette bearing 25th July, 1985, when in fact, the gazette was not printed and made available for sale on 25th July, 1986, but was issued on 6th August, 1986, and despatched on 7th August, 1986 cannot be regarded as proper and valid publication, as envisaged u/s 68C of the Motor Vehicles Act, 1939 and the Rajasthan Road Transport Service (Development) Rules, 1965.

25. I, therefore, allow the writ petitions, quash the scheme as published in the gazette dated 15th July, 1986 (Annx. P/21). However, it will be open to the Government to publish the scheme afresh in the official gazette in accordance with law. There shall be no order as to costs.